INDEX TO JOINT APPENDIX.

IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9338.

PEOPLES BANK, *Appellant*,

v.

MARRINER S. ECCLES, RONALD RANSOM, M. S. SZYMCZAK, JOHN K. McKEE, ERNEST A. DRAPER AND RUDOLPH M. EVANS, *Appellees*.

Appeal from the District Court of the United States for the District of Columbia.

JOINT APPENDIX.

Complaint for Declaratory Judgment and Incidental Injunctive Relief

1 Filed Dec 24 1945

In the District Court of the United States

For the District of Columbia

No. Civil 32200

PEOPLES BANK, *Plaintiff*,

v.

MARRINER S. ECCLES, RONALD RANSOM, M. S. SZYMCZAK, JOHN K. MCKEE, ERNEST G. DRAPER AND RUDOLPH M. EVANS, *Defendants*.

The plaintiff, for its complaint, alleges:

I. Jurisdiction is founded on the existence of a Federal question and amount in controversy.

The action arises under the Constitution of the United States, Article I, §§ 1 and 8, and the Fifth Amendment to the Constitution of the United States, and under § 9 of the Federal Reserve Act as amended (12 U. S. C. §§ 321-328, inclusive), and under Section 12B of the Federal Reserve Act, as amended (12 U. S. C. § 264), as hereinafter more fully appears, and under the Act of June 14, 1934, Chapter 512, 48 Stat. 955 as amended (28 U. S. C. § 400), known as the Federal Declaratory Judgment Act. The amount in controversy exceeds, exclusive of interest and costs, the sum of Three thousand dollars.

II. Plaintiff is and at all times herein mentioned has been a state banking corporation organized and existing
2 under the laws of the state of California, with its principal place of business in Lakewood Village, Los Angeles County, State of California. Plaintiff on or about May 15, 1942 became and still is a member of the

Federal Reserve System and an insured bank (Federal Reserve Act, as amended, §§ 9, 12B(e)(2); 12 U. S. C. §§ 321, 264(e)(2)).

III. The defendant Marriner S. Eccles is and at all times herein mentioned was a member and Chairman, the defendant Ronald Ransom is and at all times herein mentioned was a member and Vice Chairman, and the defendants M. S. Szymczak, John K. McKee, Ernest G. Draper and Rudolph M. Evans are and at all times herein mentioned were members of the Board of Governors of the Federal Reserve System and all have their offices in the District of Columbia, and, with the exception of Rudolph M. Evans, who resides in Virginia, all reside in the District of Columbia.

IV. Although the above named defendants have purported to act in their official capacity as the Board of Governors of the Federal Reserve System in the matters and respects hereinafter set forth with regard to a certain condition of membership affecting the plaintiff, hereinafter alleged, said defendants have acted and are acting in respect of such matters without authority of law and in violation of the Constitution and Statutes of the United States. Consequently, said defendants cannot justify such acts by virtue of their official positions and they are subject to be sued and are sued herein personally.

V. On or about November 28, 1941, plaintiff, being
3 in all respects qualified and eligible for membership in the Federal Reserve System and desiring to become a member thereof, made application to the Board of Governors of the Federal Reserve System (hereinafter sometimes called the "Board"); pursuant to such rules and regulations as had then been prescribed, for the right to subscribe to the stock of the Federal Reserve Bank of San Francisco, which was and is the Federal reserve bank organized within the Twelfth Federal Reserve District, within which plaintiff was then and is now located.

VI. Thereafter and on or about May 6, 1942, the Board approved the said application and permitted the plaintiff to become a stockholder of the Federal Reserve Bank of San Francisco and a member bank.

VII. Upon information and belief, in considering and approving said application, the Board, as required by 12 U. S. C. §§ 322 and 264(e)(2) and (g), took into consideration the financial condition and history of the plaintiff, the general character of its management, whether or not the corporate powers exercised by it were consistent with the purposes of Chapter 3 of Title 12 of the United States Code, the adequacy of plaintiff's capital structure, its future earnings prospects and the convenience and needs of the community to be served, and found the plaintiff Bank to be fully qualified and eligible for membership in the Federal Reserve System.

VIII. Notwithstanding the findings of said Board
4 as alleged in the preceding paragraph hereof, the defendants, purporting to act in their official capacity as said Board, but acting in excess of any powers conferred by law upon them or upon said Board and wholly without authority of law, purported to subject the plaintiff's membership in the Federal Reserve System to a certain condition, and they prescribed the same as follows, to-wit:

"4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary thereof, acquires, directly or indirectly, through the mechanism of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System."

IX. Said Condition No. 4 was and is arbitrary, unreasonable, capricious, discriminatory, ultra vires the authority of the Board; null and void, and no power has been conferred upon the Board or these defendants to exact of the plaintiff or any other applying bank such a condition to ownership of stock in a Federal reserve bank, or to membership in the Federal Reserve System. The attempted subjection of this plaintiff to said Condition No. 4 constitutes an abuse of power and attempted usurpation by the defendants of powers vested solely in the Congress of the United States by Article I, §§ 1 and 8 of the Constitution of the United States, and any action pursuant to said void Condition No. 4 taken for the purpose of effecting a cancellation of plaintiff's stock in the Federal Reserve Bank of San Francisco or of terminating the membership of the plaintiff in the Federal Reserve System and any other action taken by defendants pursuant to said Condition No. 4 would constitute a taking of plaintiff's property without due process of law in violation of plaintiff's rights under the Fifth Amendment of the Constitution of the United States, and would be in violation of the provisions of the Federal Reserve Act, as amended, and more particularly of §§ 264, 321 to 328, inclusive, and 330 of Title 12 of the United States Code.

X. Plaintiff, upon becoming a member bank of the Federal Reserve System, became an insured bank under and by virtue of the provisions of § 12B of the Federal Reserve Act as amended, subsection (e)(2) (12 U. S. C. § 264 (e)(2)) and has at all times since remained an insured bank and entitled to all of the benefits of said section; and upon the termination of its membership in the Federal Reserve System the plaintiff would in law lose its status as an insured bank and the benefits of said § 12B (§12B of the Federal Reserve Act as amended), subsection (i)(2), 12 U. S. C. § 264 (i)(2), and such loss would render the plaintiff unable lawfully and advantageously to pursue its functions as a bank and to conduct its operations to the

advantage of its stockholders and the public served by it under supervision according to law. Said Condition No. 4 purports to work a forfeiture of membership of the plaintiff Bank in the Federal Reserve System for a cause which does not in law constitute a ground of forfeiture and said condition is therefore void and of no legal effect. Said Condition No. 4 is void for the further reason that it purports to work a forfeiture of plaintiff's membership
6 in the Federal Reserve System and to deprive plaintiff of the benefits of the provisions of the Federal Reserve Act on account of acts and transactions of individuals over which plaintiff has no power or control. In the attempted subjection of plaintiff to the operation of said condition the defendants have acted in excess and in abuse of the powers conferred upon them by law as members of said Board and in violation of obligations specifically imposed upon the Board and upon them in that § 12B(y) of the Federal Reserve Act as amended provides that the purpose of § 12B is to provide all banks with the same opportunity to obtain and enjoy the benefits of this section.

XI. On or about February 17, 1944, without the assistance or prior knowledge of plaintiff, said Transamerica Corporation acquired 500 shares out of the total of 5,000 shares of the capital stock of plaintiff, and said shares were transferred into the name of and issued to said Transamerica Corporation. Thereafter, without the assistance or prior knowledge of plaintiff, said Transamerica Corporation acquired an additional 40 shares of its capital stock, which was registered in the name of Transamerica Corporation on December 20, 1944, making a total of 540 shares of plaintiff's capital stock now owned and held by Transamerica Corporation in its own name.

XII. Upon information and belief, the acquisitions of said shares by Transamerica Corporation were made without the written approval of the defendants or the Board

and fall within the purview of the above quoted Condition No. 4.

XIII. On or about April 4, 1944, plaintiff notified
7 the Board of the acquisition of said 500 shares of stock of plaintiff by Transamerica Corporation, and thereafter plaintiff notified the Board of the acquisition of said 40 shares of stock of plaintiff by Transamerica Corporation.

XIV. Thereafter and on or about the 4th day of December, 1945, the plaintiff made demand upon the Board through its General Counsel at Washington, D. C., that said Condition No. 4 be cancelled and thus eliminated as a continuing threat to the continued membership of the plaintiff in the Federal Reserve System. Said demand has not been complied with; said condition has not been cancelled; and in the absence of the relief demanded in this complaint, plaintiff is under the continuing necessity of conducting its business and making substantial commitments for the future in the course of such business subject to the constant and continuing threat of great and incalculable losses which will be suffered, upon any attempt being made, pursuant to the terms of said illegal and unauthorized Condition No. 4, to deprive it of its membership in the Federal Reserve System and the advantages incidental thereto. By reason of the existence of a purported power in the Board derived from the unlawful action of these defendants, as aforesaid, to terminate its existing status at will, and notwithstanding full compliance by the plaintiff with all provisions of law and all lawful regulations and conditions governing its right to remain a member bank and an insured bank, the plaintiff is at all times at great disadvantage and subjected to continuous injury in dealing with its clients and serving its patrons who are desirous of establishing banking relations with it upon a permanent basis.

8 XV. The Board and the defendants have at all times maintained and contended that said Condition No. 4 is valid and enforceable against the plaintiff and empowers them to effectuate the termination of plaintiff's membership in the Federal Reserve System and to deprive the plaintiff of the benefits incidental to such membership.

XVI. Upon information and belief, in the absence of the relief sought by this complaint, the defendants intend to and will take proceedings predicated on said Condition No. 4, designed to deprive the plaintiff of its membership in the Federal Reserve System and all the benefits thereof, and such proceedings and the constant and continuing threat thereof prior to the actual institution thereof have caused and will continue to cause great and irreparable injury and damage to the plaintiff. Upon information and belief, the initiation of such proceedings is imminent.

XVII. The plaintiff has at all times complied with the requirements of § 324 of Title 12 of the United States Code and the other pertinent statutes of the United States and the lawful rules, regulations and conditions of the Board, and is entitled under said statutes and regulations to retain its membership in the Federal Reserve System, and is desirous of so retaining said membership, and it has ever intended and now intends to do all things necessary to retain said membership and to avoid lawful forfeiture thereof.

XVIII. By reason of the premises, there exists between the parties to this action an actual justiciable controversy within the purview of the Declaratory Judgment
9 Act, § 400 of Title 28 of the United States Code, and the plaintiff is entitled to have its rights in this action adjudged and declared therein.

XIX. The plaintiff has no adequate remedy at law.

Wherefore, plaintiff demands that the Court adjudge, decree and declare:

1. The rights and legal relationships of the plaintiff and the defendants in the premises.

2. That said Condition No. 4, hereinabove set forth, is unauthorized by law and beyond the power of said defendants or any of them to impose or enforce, and is invalid, null and void.

3. That the defendants and each of them, and the officers, attorneys and agents of each of them, be permanently restrained from the enforcement of said condition, or from taking any steps predicated thereon to effectuate the termination of plaintiff's ownership of stock in the Federal Reserve Bank of San Francisco or the termination of plaintiff's membership in the Federal Reserve System.

4. That the defendants and each of them, and the officers, attorneys and agents of each of them, be restrained pendente lite from taking any action designed to enforce said Condition No. 4, or otherwise to terminate plaintiff's ownership of stock in the Federal Reserve Bank of San Francisco, or plaintiff's membership in the Federal Reserve System by any action predicated on said Condition No. 4.

5. Such other, further and different relief as the Court may deem equitable and meet in the premises.

December 24, 1945.

FULTON, WALTER & HALLEY

By EUGENE O'DUNNE, JR.
A Partner
Attorneys for Plaintiff,
Southern Building,
Washington, D. C.

SANNER, FLEMING & IRWIN,
5658 Wilshire Boulevard,
Los Angeles, California,
BLAKE, VOORHEES & STEWART,
20 Exchange Place,
New York, New York,
Of Counsel.

11 Filed Jan 31 1946

Motion to Dismiss

Come now the defendants by their attorneys undersigned, and move this Honorable Court to dismiss the complaint herein upon the following ground:

This Court is without jurisdiction of the subject matter of the complaint because it presents no justiciable controversy between the parties hereto.

EDWARD M. CURRAN,
United States Attorney for the
District of Columbia,
Court House,
Washington, D. C.

GEORGE B. VEST
J. LEONARD TOWNSEND
Board of Governors of the
Federal Reserve System,
Washington, D. C.
Counsel for Defendants.

12 Filed Jan 31 1946

Affidavit of Bray Hammond

WASHINGTON,
District of Columbia, ss:

Bray Hammond, being first duly sworn, does on oath depose and say as follows:

That he is the Assistant Secretary of the Board of Governors of the Federal Reserve System and is authorized by it to make this affidavit:

That the following excerpt is a true copy of a portion of the minutes of a meeting of the Board of Governors of the Federal Reserve System held in Washington on Monday, January 28, 1946, at 4:45 p. m., at which there were present the following members of the Board: Mr. Eccles,

Chairman, Mr. Ransom, Vice Chairman, and Messrs. Szymczak, McKee, Draper, and Evans:

"Upon consideration of the latest report of examination of the Peoples Bank, Lakewood Village, California, from which the Board concluded that there had been no substantial change in the control, management or policy of the bank resulting from the acquisition by Transamerica Corporation of certain shares of the bank's stock, the Board, by unanimous vote, decided that there was no present need in the public interest for any action by the Board with respect to the condition of membership of the bank relating to acquisition of its stock by Transamerica Corporation."

Given under my hand and the seal of the Board of Governors of the Federal Reserve System this 31st day of January, A. D. 1946.

BRAY HAMMOND
Assistant Secretary.

Subscribed and sworn to before me this 31st day of January, A. D. 1946.

ROYAL A. POUND
Notary Public.

My Commission expires Nov. 30, 1950.

* * * * * * * * * * *

13 Filed Mar 14 1946

Opinion

Motion by defendants to dismiss complaint in action for a declaratory judgment.

J. Leonard Townsend, Esq., Hon. Edward M. Curran, United States Attorney for the District of Columbia, and George B. Vest, Esq., of Washington, D. C., for the Motion.

Samuel B. Stewart, Esq., of New York, N. Y.; Blake, Voorhees and Stewart of New York, N. Y.; Fulton, Walter & Halley, of Washington, D. C.; and Sanner, Fleming & Irwin, of Los Angeles, California, opposed.

This is an action for a declaratory judgment. The plaintiff is the Peoples Bank, a banking corporation organized under the laws of the State of California. The defendants are members of the Board of Governors of the Federal Reserve System. The purpose of the action is to secure an adjudication that one of the conditions attached to the plaintiff's admission to membership in the Federal Reserve System is invalid, null and void. The defendants move to dismiss the complaint on the ground that
14 no justiciable controversy is presented and that, therefore, the action does not lie.

It appears from the complaint that the Peoples Bank was admitted to membership in the Federal Reserve System on May 6, 1942, subject to the following condition:

"4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary thereof, acquires, directly or indirectly, through the mechanism of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System."

In other words, if the Transamerica Corporation, or any of its affiliates or subsidiaries, were to acquire any interest in the Peoples Bank, the latter is to withdraw from membership in the Federal Reserve System on notice from the Board of Governors.

The complaint further alleges that subsequently to the admission of the Bank to membership in the Federal Reserve System, the Transamerica Corporation, without the plaintiff's assistance or prior knowledge, purchased 540

shares of the plaintiff's capital stock, and now owns the stock so acquired. The Bank informed the defendants of these transactions and demanded a cancellation of the above-mentioned condition. This demand has not been complied with. It is further alleged in substance that in the light of the circumstances, the existence of the condition is a hindrance to the plaintiff's business, as the plaintiff is subject to the constant and continuing threat or possibility of an incalculable loss, which would accrue if the bank were deprived of its membership in the Federal Reserve System. It is not denied that the Board of Governors of the Federal Reserve System is empowered to prescribe conditions on which banks may join the System (U. S. Code, Title 12, Sec. 321). It is contended, however, that the imposition of the condition here involved was beyond the authority of the Board. The bank seeks an adjudication that the condition is invalid.

The question presented on this motion to dismiss the complaint is whether a justiciable controversy is involved, which may form the basis for a declaratory judgment. In order to reach a determination of this issue, it is first necessary to consider the basic principles governing actions for declaratory judgments.

Actions for declaratory judgments represent a comparatively recent development in American jurisprudence. The traditional and conventional concept of the judicial process has been that the courts may act only in case a litigant is entitled to a coercive remedy, such as a judgment for damages or an injunction. Until a controversy had matured to a point at which such relief was appropriate and the person entitled thereto sought to invoke it, the courts were powerless to act. At times, however, there may be an actual dispute as to the rights and obligations of the parties, and yet the controversy may not have ripened to a point at which an affirmative remedy is needed. Or, this stage may have been reached and yet the party entitled to seek the remedy may fail or decline to take steps to enforce it. For

example, the maker or indorser of a promissory note may have stated to the payee that the instrument would not be honored at maturity, because, perhaps, his signature
16 is claimed to have been forged or procured by fraud or affixed without his authority. The payee had to wait until payment was due before appealing to the courts. It might have been important for him to ascertain in advance whether the note was a binding obligation and whether he might rely on it and list it among his assets. Nevertheless, he could receive no judicial relief until the instrument became due and was dishonored. Or it might have been necessary for a person to determine whether he was bound by some contractual provision which he deemed void. In that event, if he desired to contest the matter, he he had to assume the risk and to hazard the consequences of committing a breach and then await a suit. Or, the owner of a patent might assert that a manufacturer was infringing his monopoly, while the latter contended that his product was not an infringement or that the patent was invalid. The manufacturer was helpless, however, to secure an adjudication of the issue, but had to pursue his course of action and await suit for infringement, unless he preferred to yield and discontinue his activity.

The purpose of actions for declaratory judgments is to provide a means by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached the stage at which either party may seek a coercive remedy, or in which the party entitled to it fails to invoke it. The privilege of bringing such actions places a new weapon or implement at the disposal of the courts. It does not expand their jurisdiction. It introduces merely a new and more flexible procedure for determining controversies and adjudicating rights and obligations. It enlarges the judicial process and renders it more pliant and malleable.

17 As judicial tribunals exist for the purpose of deciding actual controversies, it is not within the pur-

view of this highly desirable and wholesome innovation that the courts shall render advisory opinions or answer abstract questions to satisfy the convenience or the curiosity of the inquirer. If the action is brought in a Federal court, this limitation and qualification is emphasized by the constitutional provision restricting the jurisdiction of the Federal judiciary to the decision of "cases and controversies". Actual controversies frequently arise, however, under circumstances requiring solely a declaration of rights without an award of coercive relief. In such a situation, an action for a declaratory judgment may be maintained.

The declaratory judgment procedure has been known in England for a great many years. In 1922, after its adoption by a number of States, the National Conference of Commissioners on Uniform State Laws drafted and recommended a uniform Declaratory Judgment Act, which has been enacted by a great many of the States.[1] The Federal Declaratory Judgment Act became law in 1934.[2] The report of the Senate Committee on the Judiciary, which recommended the passage of the legislation (S. Rept. No.
18 1005, 73d Cong., 2d Sess.) contains the following illuminating statements:

"The procedure has been especially useful in avoiding the necessity, now so often present, of having to act at one's peril or to act on one's own interpretation of his rights, or abandon one's rights because of a fear of incurring damages. So now it is often necessary, in the absence of the declaratory judgment procedure, to violate or purport to violate a statute in order to obtain a judicial determination of its meaning or validity. . . . So now it is often

[1] For leading State cases on this subject, see Sheldon v. Powell, 99 Fla. 782; and Kariher's Petition, 284 Pa. 455.

[2] U. S. Code, Title 28, Section 400:

"(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such."

necessary to break a contract or a lease, or act upon one's own interpretation of his rights when disputed, in order to present to the court a justiciable controversy. In jurisdictions having the declaratory judgment procedure, it is not necessary to bring about such social and economic waste and destruction in order to obtain a determination of one's rights: . . . Persons now often have to act at their peril, a danger which could be frequently avoided by the ability to sue for a declaratory judgment as to their rights or duties."

The statute should be liberally construed, in accordance wth the general canon of statutory construction applicable to remedial statutes. *Reliance Life Ins. Co.* v. *Burgess*, 112 F. (2d) 234 (C. C. A. 8th); *Mississippi Power and Light Co.* v. *City of Jackson*, 116 F. (2d) 924 (C. C. A. 5th); *Oil Workers' Inter-Union* v. *Texoma Nat. Gas Co.*, 146 F. (2d) 62 (C. C. A. 5th).

One of the leading cases interpreting and applying the Federal statute is *Aetna Life Insurance Co.* v. *Haworth*, 300 U. S. 227, in which an insurance company was permitted to maintain an action for a declaratory judgment to secure an adjudication that a life insurance policy had lapsed for non-payment of premiums and had not matured by an alleged total and permanent disability of the insured. The court held that this dispute presented a justiciable controversy cognizable by the courts under the Declaratory Judgment Act. Mr. Chief Justice Hughes made the following observations on this subject (pp. 239-241):

19

"The Declaratory Judgment Act of 1934, in its limitation to 'cases of actual controversy,' manifestly has regard to the constitutional provision and is operative only in respect to controversies which are such in the constitutional sense. The word 'actual' is one of emphasis rather than of definition. Thus the operation of the Declaratory Judgment Act is procedural only. In providing remedies and defining procedure in relation to cases and controversies in the constitutional sense the Congress is acting within its delegated power over the jurisdiction of the

federal courts which the Congress is authorized to establish . . . Exercising this control of practice and procedure the Congress is not confined to traditional forms or traditional remedies. . . . In dealing with methods within its sphere of remedial action the Congress may create and improve as well as abolish or restrict. The Declaratory Judgment Act must be deemed to fall within this ambit of congressional power, so far as it authorizes relief which is consonant with the exercise of the judicial function in the determination of controversies to which under the Constitution the judicial power extends.

"A 'controversy' in this sense must be one that is appropriate for judicial determination. . . . A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot . . . The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. . . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. . . Where there is such a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. . . And as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required."

In *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, the court sustained the right of an insurance company to secure a declaratory judgment to the effect that under the circumstances presented it was not liable to indemnify the defendant, who was the insured named in a liability insurance policy issued by the

company. Mr. Justice Murphy made the following comments on this point (p. 273):

"The difference between an abstract question and a 'controversy' contemplated by the Declaratory Judgment Act is necessarily one of degree, and it would be difficult, if it would be possible, to fashion a precise test for determining in every case whether there is such a controversy. Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. See *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227, 239-242. It is immaterial that frequently, in the declaratory judgment suit, the positions of the parties in the conventional suit are reversed; the inquiry is the same in either case. *Nashville, C. & St. L. Ry. Co.* v. *Wallace*, supra, p. 261.[3]

"That the complaint in the instant case presents such a controversy is plain."

It has been frequently held that actions for declaratory judgments may be maintained by insurance carriers to determine the extent of the coverage of insurance policies issued by them, or their liability under a specific set of facts. *Hepburn* v. *Pennsylvania Indemnity Corp.*, 71 App. D. C. 257; *Pennsylvania Casualty Co.* v. *Upchurch*, 139 F. (2d) 892 (C. C. A. 5th); *Employers Liability Assur. Corp.* v. *Ryan*, 109 F. (2d) 690 (C. C. A. 6th).

In *Altvater* v. *Freeman*, 319 U. S. 359, an action was brought to adjudicate that certain patents were invalid, or in the alternative, that they were covered by a certain license agreement. The Court held that the action might be maintained. It remarked that unless the plaintiff
21 could obtain an adjudication of his rights, he incurred the risk of judgments for damages in infringement suits and added that "It was the function of the

[3] 288 U. S. 249.

Declaratory Judgments Act to afford relief against such peril and insecurity". (p. 365).

In *Dewey & Almy Chemical Co.* v. *American Anode*, 137 F. (2d) 68 (C. C. A. 3d), it was held that an action for declaratory judgment would lie to determine the validity of a patent. The same conclusion was reached in *E. Edelmann & Co.* v. *Triple-A Specialty Co.*, 88 F. (2d) 852, 854 (C. C. A. 7th), in which Judge Lindley stated:

"It was the congressional intent to avoid accrual of avoidable damages to one not certain of his rights and to afford him an early adjudication without waiting until his adversary should see fit to begin suit, after damage had accrued."

In *Davis* v. *American Foundry Equipment Co.*, 94 F. (2d) 441 (C. C. A. 7th), such an action was upheld for the purpose of adjudicating the validity of a contract.

In *Perkins* v. *Elg.*, 307 U. S. 325, affirming 99 F. (2d) 408 (U. S. App. D. C.), an action for a declaratory judgment against the Secretary of Labor was held maintainable for the purpose of determining the plaintiff's citizenship.[4]

In *Tennessee Coal Co.* v. *Muscoda Local*, 321 U. S. 590, the Supreme Court upheld an action for a declaratory judgment for the purpose of determining whether in computing the number of working hours in coal mines under the Fair Labor Standards Act, it was proper to include time consumed by employees in traveling to the place
22 of work from the entrance to the mines.

In *Samuel Goldwyn Inc.* v. *United Artists Corp.*, 113 F. (2d) 703 (C. C. A. 3d), it was held that an action would lie to secure a declaratory judgment that certain contracts had been terminated.

In *Mississippi Power and Light Co.* v. *City of Jackson*, 116 F. (2d) 924, 925 (C. C. A. 5th), an action was brought to secure a determination as to the validity and construc-

[4] This case originated in this jurisdiction. Mr. Chief Justice Groner in his opinion in the United States Court of Appeals (pp. 413-414) discusses this aspect of the litigation in considerable detail.

tion of certain contract provisions. In his opinion Judge Hutcheson made the following observations:

"While the declaratory judgment act has not added to the jurisdiction of the Federal courts, it has added a greatly valuable procedure of a highly remedial nature. Extending by its terms to all cases of actual controversy 'except with respect to Federal taxes', it should be, it has been given a liberal construction and application to give it full effect . . . a normal, indeed a common use of it has been in the construction of contracts and the declaration of rights under them."

The latest case on this point in this jurisdiction is *Farrall v. District of Columbia Amateur Athletic Union*, decided February 25, 1946, in which the United States Court of Appeals upheld the rights of a member of the District of Columbia Amateur Athletic Union to secure an adjudication as to his right to obtain a sanction to engage in an exhibition.

Accepting the foregoing principles and authorities as a guide, it is clear that a justiciable controversy exists in the instant case, warranting recourse to an action for a declaratory judgment. One of the conditions on which the plaintiff was admitted to membership in the Federal Reserve System, was that on demand of the Board of Governors the plaintiff would withdraw from the System if any of its shares of stock were acquired by the
23 Transamerica Corporation, or any of its subsidiaries or affiliates. Supervening events have created a situation enabling the defendants to invoke this condition. The plaintiff claims that the condition is ultra vires and illegal, and has made a demand on the Board of Governors for its cancellation. The Board maintains the validity of the condition. In fact, counsel for the defendants, with commendable candor and disarming emphasis, so admitted in open court on the argument of this motion. In view of events that have transpired, the condition hangs

over the bank like the sword of Damocles ready to strike whenever the Board of Governors chooses to wield the weapon at its command. In the words of Mr. Justice Douglas in *Altvater* v. *Freeman*, 319 U. S. 359, 365, "It was the function of the Declaratory Judgments Act to afford relief against such peril and insecurity".

The plaintiff is not seeking an answer to a hypothetical question, or a solution of a theoretical or abstract problem. In making its future plans and in protecting its business, it is essential from the standpoint of the plaintiff that the validity of the condition be adjudicated. Failure to enforce the condition thus far, would hardly estop or preclude the defendants or their successors from doing so at some future time. To say that no actual controversy exists between the parties is not realistic.

No reason is perceived why the defendants should oppose a decision on this issue at this time. If the matter were not subject to any judicial review under any circumstances, their attitude would be understandable. If, however, the defendants should at any time seek to enforce the condition, a judicial adjudication as to its validity could
24 be secured by the plaintiff in an action for an injunction. It seems desirable as a matter of orderly administration and substantial justice that such a determination be had at an early stage of the controversy. It does not seem to the court that a governmental or quasi-governmental agency should interpose obstacles or place obstructions in the way of an early judicial determination of the validity of its potential actions, if their legality is challenged by a party subject to them. No prejudice to the defendants is discernible from such an adjudication.

The authorities on which the defendants rely do not dispose of the question. They may be divided into three groups. First, some of the cases involve statutes to which criminal sanctions are attached. Obviously, it is inappropriate to render a declaratory judgment for the purpose of determining whether a specific activity would constitute

a crime. Such matters are left to determination by criminal prosecutions. Another group comprises cases involving attempts to secure determinations as to the validity of prospective actions of administrative bodies acting in a quasi-judicial capacity. To do so, however, would partially at least deprive the adminstrative body of its jurisdiction, and would contravene the principle that if a specific mode of reviewing the action of such an agency is provided by statute, the prescribed remedy is exclusive. The third category comprehends cases in which the defendant had no final authority over the matter in dispute. Manifestly, in such instances, a declaratory judgment would deal with a moot case. None of the authorities cited by the defendants supports their contention that no justiciable controversy is presented in the instant case.

25 The defendants also call attention to *Peoples Bank* v. *Federal Reserve Bank of San Francisco*, 58 F. Supp. 25, decided by the District Court of the United States for the Northern District of California, in which an action was brought by the present plaintiff against the Federal Reserve Bank of San Francisco, the Federal Reserve Agent, and the Board of Governors of the Federal Reserve System, to annul and enjoin the enforcement of the condition involved in this action. The action was dismissed as against the Board of Governors on the ground that the Board was not an inhabitant of the Northern District of California, and, therefore, might not be sued therein without its consent. It was dismissed as against the Federal Reserve Bank of San Francisco and against the Federal Reserve Agent on the ground that they had no authority to act and that there was no justiciable controversy as to them, inasmuch as the administrative power to expel banks from the Federal Reserve System is vested by law solely in the Board of Governors. The opinion did not pass either on the validity of the condition, or on the propriety of maintaining an action for a declaratory judgment against the Board of Governors of the Federal Reserve

System in the jurisdiction in which they are subject to suit. Consequently, the case does not bear upon the issues presented in this action.

I conclude that the complaint presents a justiciable controversy which may be appropriately adjudicated in an action for a declaratory judgment.

Motion to dismiss the complaint is denied.

ALEXANDER HOLTZOFF
Associate Justice.

March 14, 1946.

* * * * * * * * * *

26 Filed Mar 18 1946

Order

This cause came on for hearing of defendants' motion to dismiss the complaint because it presents no justiciable controversy between the parties thereto, and the Court having heard the arguments of counsel and being advised, it is by the Court this 18th day of March 1946

Ordered that defendants' motion be and the same hereby is in all respects denied.

By the Court

ALEXANDER HOLTZOFF
Alexander Holtzoff, *Justice*

* * * * * * * * * *

27 Filed Mar 25 1946

Joint and Several Answer of Defendants

Now come Marriner S. Eccles, Ronald Ransom, M. S. Szymczak, John K. McKee, Ernest G. Draper and Rudolph M. Evans, the defendants herein, by their attorneys undersigned, and for answer to the complaint these defendants and each of them severally say as follows:

First Defense

On the basis of the facts appearing in the complaint, plaintiff is estopped from challenging the validity of Condition No. 4.

Second Defense

The complaint fails to state any claim against the defendants herein, or any of them, upon which any relief can be granted, because:

1. The complaint shows on its face that, in imposing Condition No. 4, the Board of Governors of the Federal Reserve System was acting in the exercise of an administrative discretion conferred upon it by section 9 of the Federal Reserve Act (12 U. S. C. 321); the court is therefore without authority to substitute its judgment for that of the Board in a matter which is within the discretionary authority of such Board;

28 2. The complaint shows on its face that Condition No. 4 is valid; and

3. For other reasons apparent of record.

EDWARD M. CURRAN
United States Attorney for the District of Columbia,
Court House,
Washington, D. C.

GEORGE B VEST
J LEONARD TOWNSEND
Board of Governors of the Federal Reserve System,
Washington, D. C.
Counsel for Defendants.

29 Filed Mar 25 1946

Motion for Judgment on the Pleadings

Now come Marriner S. Eccles, Ronald Ransom, M. S. Szymczak, John K. McKee, Ernest G. Draper and Rudolph M. Evans, defendants herein, by their attorneys undersigned, and move this Honorable Court to enter judgment upon the pleadings herein, and for cause therefor said defendant say as follows:

1. On the basis of the facts appearing in the complaint plaintiff is estopped from challenging the validity of Condition No. 4.

2. The complaint fails to state any claim against the defendants herein, or any of them, upon which any relief can be granted.

EDWARD M. CURRAN
United States Attorney for the District of Columbia,
Court House,
Washington, D. C.

GEORGE B VEST
J LEONARD TOWNSEND
Board of Governors of the Federal Reserve System,
Washington, D. C.
Counsel for Defendants.

30 Filed Apr 15 1946

Motion for Summary Judgment Pursuant to Rule 56 and for Speedy Hearing of an Action for a Declaratory Judgment Pursuant to Rule 57

Plaintiff moves the Court as follows:

1. That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiff's favor for the relief demanded in the complaint, on the

ground that the affirmative defenses set forth in defendants' answer are insufficient as a matter of law and that there is therefore no genuine issue as to any material fact and plaintiff is entitled to judgment as a matter of law; or, in the alternative,

2. If summary judgment is not rendered in plaintiff's favor upon the whole case or for all the relief asked and a trial is necessary, that the Court, at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating counsel, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted, and thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just, and that the Court in such event order a speedy hearing of the action, which is one for a declaratory judgment, and advance it on the calendar pursuant to Rule 57 of the Federal Rules of Civil Practice.

3. This motion is based upon:

(a) The complaint filed in this Court on December 24, 1945.

(b) The defendants' motion to dismiss upon the ground that this Court is without jurisdiction of the subject matter of the complaint because it presents no justiciable controversy between the parties hereto, filed in this Court on January 31, 1946.

(c) The order of this Court made and entered by Hon. Alexander Holtzoff on March 18, 1946, in all respects denying said motion to dismiss.

(d) The opinion of Hon. Alexander Holtzoff dated and filed herein on or about March 14, 1946, upon said motion to dismiss.

(e) The joint and several answer of the defendants served and filed herein on March 25, 1946.

(f) The affidavit of W. M. Parker sworn to April 4, 1946, and exhibits numbered 1 to 12, inclusive, annexed thereto and incorporated by reference therein.

(g) The affidavit of John S. Griffith sworn to April 4, 1946.

32 (h) The affidavit of W. L. Andrews sworn to April 6, 1946, and exhibits numbered 14 to 28, inclusive, annexed thereto and incorporated by reference therein.

(i) Affidavit of A. L. Elliott Ponsford sworn to April 6, 1946.

(j) The affidavit of Laban H. Brewer sworn to April 4, 1946.

(k) The affidavit of Michael G. Luddy sworn to February 2, 1946.

Dated, April 15, 1946.

BLAKE, VOORHEES & STEWART

By SAMUEL B. STEWART, JR.
20 Exchange Place
New York 5, N. Y.

FULTON, WALTER & HALLEY

By JOSEPH W. BURNS
Occidental Hotel Building
1421 Pennsylvania Avenue
Washington, D. C.

SANNER, FLEMING & IRWIN

By JOHN A FLEMING
5658 Wilshire Boulevard
Los Angeles, California
Counsel for Plaintiff

33 Filed Apr 15 1946

Affidavit of W. M. Parker

STATE OF CALIFORNIA
County of Los Angeles, ss.:

W. M. Parker being duly sworn, deposes and says:

I am Secretary of the plaintiff, Peoples Bank, and have been such since the organization of said Bank. This affidavit is submitted in support of the plaintiff's motion for summary judgment for the purpose of setting forth for the information of the Court the exact circumstances, as disclosed by the records of the plaintiff Bank, in which Condition No. 4 prescribed by the defendants was imposed upon the plaintiff.

The organization of Peoples Bank in Lakewood Village, which is a suburb of Los Angeles, California, was begun in the Fall of the year 1941. The organizers of the Bank knew that in order for the Bank to function as such it would be necessary for it to have Federal Deposit Insurance. There were two ways prescribed by law for a State bank to obtain Federal Deposit Insurance: (1) By direct application to the Federal Deposit Insurance Corporation; and (2) By an application for membership in the Federal Reserve System which, under the law, automatically carried with it Federal Deposit Insurance.

34 The organizers of the Peoples Bank deemed it desirable to have membership in the Federal Reserve System and therefore chose that method of obtaining Federal Deposit Insurance. Accordingly, on Oct. 15, 1941, Mr. Clyde Doyle of Long Beach, California, who was counsel for the organizers of the Bank, addressed a letter to the Federal Reserve Bank of San Francisco, enclosing a signed copy of a letter dated September 24, 1941 by George J. Knox, Superintendent of Banks of the State of California, in which permission was granted to proceed with the organization of Peoples Bank, such permission being based

on the condition that Federal Deposit Insurance be obtained. Mr. Doyle's letter requested information as to the procedure for obtaining membership in the Federal Reserve System. A copy of Mr. Doyle's letter is annexed hereto, marked Exhibit No. 1, and incorporated herein. A copy of the letter of the California Superintendent of Banks, which was enclosed with Mr. Doyle's letter, is annexed hereto, marked Exhibit No. 2, and incorporated herein. The attention of the court is respectfully directed to the sentence of the said letter from the California Superintendent of Banks which imposed a condition upon the Peoples Bank that it would have to obtain Federal Deposit Insurance, to be effective concurrently with its opening for business.

In reply Mr. Doyle received a letter signed by Mr. R. B. West, Vice President of the Federal Reserve Bank of San Francisco, dated October 21, 1941, a copy of which is annexed hereto, marked Exhibit No. 3, and incorporated herein.

Under date of December 2, 1941, Mr. Doyle wrote to the Federal Reserve Bank of San Francisco enclosing in duplicate the application of Peoples Bank for membership in the Federal Reserve System. A copy of said letter, marked Exhibit No. 4, is annexed hereto and incorporated herein. A copy of the application for membership, dated November 28, 1941, filed by the plaintiff is annexed hereto, marked Exhibit No. 5 and incorporated herein. It will be noted that said application bore the certificate in usual form of

Albert C. Agnew, as counsel for the Federal Reserve
35 Bank of San Francisco, certifying that in his opinion the Peoples Bank was legally qualified for membership and that the application was "in due and proper form". The technical deficiencies mentioned in the letter of Mr. West, dated December 5, 1941, were promptly supplied.

Subsequently, as appears from an affidavit of William A. Day, then President of the Federal Reserve Bank of

San Francisco, sworn to May 31, 1944, and filed in the District Court of the United States for the Northern District of California, Southern Division, Mr. Day received a letter dated February 14, 1942, signed by Chester Morrill, Secretary of the Board of Governors of the Federal Reserve System, stating that the Board "is unwilling to approve the application on the basis of the information now before it" and asking Mr. Day to inform the applicant accordingly but not stating any reason for such action. A copy of Mr. Morrill's letter to Mr. Day, dated February 14, 1942, is annexed hereto, marked Exhibit No. 6, and incorporated herein.

The plaintiff Bank was officially notified of the action of the Board of Governors in disapproving its application by letter of Mr. R. B. West, Vice President of the Federal Reserve Bank of San Francisco, dated February 20, 1942, a copy of which is annexed hereto, marked Exhibit No. 7, and incorporated herein.

Thereafter, under date of February 20, 1942, a request for reconsideration was made to the Board of Governors by the plaintiff Bank over the signature of E. B. Martin, Vice President. A copy of Mr. Martin's letter dated February 20, 1942, is annexed hereto, marked Exhibit No. 8, and incorporated herein.

It appears from the aforementioned affidavit of Mr. Day that such request for reconsideration was forwarded by the Federal Reserve Bank of San Francisco to the Board of Governors of the Federal Reserve System with a letter of Mr. R. B. West, Vice President of the Federal Reserve Bank of San Francisco, dated February 21, 1942. A copy of such letter is annexed hereto, marked Exhibit No. 9, and incorporated herein.

36 Under date of March 11, 1942, Mr. West wrote to Mr. Martin stating the basis upon which he had been requested to inform the plaintiff Bank that the Board of Governors would be willing to reconsider its application.

A copy of Mr. West's letter dated March 11, 1942, is annexed hereto, marked Exhibit No. 10, and incorporated herein.

Under date of April 23, 1942, the plaintiff Bank replied to Mr. West's letter of March 11, 1942, enclosing the information requested by said letter of March 11, 1942. A copy of said letter of April 23, 1942, together with copies of the enclosures, is annexed hereto, marked Exhibit No. 11, and incorporated herein.

The plaintiff Bank was then notified of the approval of its application and the imposition of Condition No. 4 in addition to the usual conditions in such a situation, which were numbered 1, 2 and 3, respectively, by letter of the Board of Governors of the Federal Reserve System, signed by L. B. Bethea, Assistant Secretary, dated May 6, 1942. A copy of said letter of May 6, 1942, is annexed hereto, marked Exhibit No. 12, and incorporated herein.

The attention of the Court is particularly directed to the statement of the reason for the imposition of Condition No. 4 as set forth in said letter and repeated here for the convenience of the Court:

"The application for membership has been approved upon representations that the bank is a bona fide local independent institution and that no holding company group has any interest in the bank at the time of its admission to membership, and that the directors and stockholders of the bank have no plans, commitments or understandings looking toward a change in the status of the bank as a local independent institution. Condition of membership numbered 4 is designed to maintain that status."

The plaintiff Bank was never informed by the defendants nor by anyone else prior to March 24, 1944 that it had been agreed between the defendants and the Federal Deposit Insurance Corporation that in the event the plaintiff should be forced to withdraw from membership in the Federal Reserve System pursuant to Condition No. 4 it would be auto-

matically refused Federal Deposit Insurance upon a direct application therefor to the Federal Deposit Insurance Corporation.

37 It was not until February 17, 1944, when Transamerica Corporation presented certificates for 500 shares of the plaintiff Bank's stock for transfer into its name, that the plaintiff Bank had any knowledge of the acquisition by Transamerica Corporation of any of such stock.

At a meeting of the Board of Directors of Peoples Bank thereafter held on March 24, 1944, plaintiff's Directors were informed for the first time of the existence of the agreement between the defendants and the Federal Deposit Insurance Corporation that the enforcement of Condition No. 4 would result in the deprivation of plaintiff's Federal Deposit Insurance. At that meeting the Board of Directors of the plaintiff Bank adopted the following resolution:

"Be It Resolved, that Peoples Bank of Lakewood Village does hereby authorize such legal proceedings to be instituted on its behalf as will be calculated to determine the legal effect of the said condition, and that to this end the bank does hereby authorize its President to employ counsel to represent the bank in the premises."

The plaintiff Bank thereafter promptly notified the Board of Governors of such acquisition and commenced legal proceedings to obtain a declaratory judgment affirming its continued right to exist and function as a bank with membership in the Federal Reserve System and with Federal Deposit Insurance upon the same basis as is permitted by law to other State banks.

Plaintiff's original suit to accomplish that purpose was brought in the United States District Court for the Northern District of California, Southern Division, and was dismissed upon jurisdictional grounds. This action was thereafter commenced in this Court.

W. M. PARKER

Subscribed and sworn to before me this 4th day of April, 1946.

PAUL MILLETTE O'NEILL
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Dec. 25, 1949.

38 Filed Apr 15 1946

Exhibit No. 1

October 15, 1941

Clyde Doyle
Our File No. 658

Mr. H. A. Sonne
Chief Examiner
Federal Reserve Bank of San Francisco
Sansome and Sacramento Streets
San Francisco, California

Re: Peoples Bank, Lakewood Village
Los Angeles County, California
Application

Dear Sir:

I herewith hand you copy of letter from the State Banking Department of California, dated at San Francisco on September 24, 1941. This is a carbon copy of an original letter, as per this carbon. This carbon was mailed me by the State Banking Department of California from the San Francisco office, accompanying the original communication, and I hand it to you with the following communication and request on behalf of my clients concerned.

Application is hereby respectfully made for membership in the Federal Reserve System of the United States of America.

Mr. E. B. Martin, whose address is 117 Ocean Avenue, Seal Beach, Orange County, California, will make him-

self immediately available to your requirements. His phone number is 837-50, Long Beach. Also, the undersigned, Clyde Doyle, will do likewise.

It is the desire of the group to move forward as expeditiously as possible in this connection. Your forwarding of the necessary application by return mail, and informing us of the information required to be supplied, will be appreciated, for which I thank you in advance.

Very truly yours

CLYDE DOYLE

CD/NBM
CC to Geo. J. Knox, San Francisco
CC to John McFaul, Los Angeles

Enc. 1
39 Filed Apr. 15 1946

Exhibit No. 2

STATE BANKING DEPARTMENT
OF CALIFORNIA

San Francisco, September 24, 1941.

Clyde Doyle and John Gee Clark,
Attorneys at Law,
612 Jergins Trust Building,
Long Beach, California

Gentlemen:

This is in reference to the application filed by you on behalf of E. B. Martin and others, for the organization of a bank at Lakewood Village, Los Angeles County, California.

During the interim between the date you first discussed this matter and since the filing of your application, I have been giving the matter serious consideration. An investigation was made of the territory to determine whether or not the public convenience and advantage will be promoted.

by the establishment of a new bank at Lakewood Village. Since the investigation I have made a personal survey of the territory to be served by the proposed bank, and I am satisfied that the public convenience and advantage will be promoted by the establishment of a new bank in this location. Therefore, I am granting my permission to proceed with the proposed organization and this enables you to circulate your stock subscription lists in order to raise the necessary capital. In other words, my findings are that the public convenience and advantage will be promoted by the establishment of a bank, and you have my permission to organize a commercial and savings bank. This action is taken by me in accordance with the provisions of Section 127 of the Bank Act.

For your convenience in circulating your stock subscription list, I am sending under separate cover 25 forms which contain an affidavit of stock ownership. Please have your subscriptions taken upon these blanks and the affidavit of ownership made by each subscriber, and upon completion of the list of stockholders you will present these forms and affidavits to this office. No commissions will be allowed on the sale of stock in the proposed institution and you will be limited to an expense of not more than $500.00 for the purpose of organization.

When you have determined your complete list of stockholders, we shall appreciate a financial statement of the principal holders of stock and you will also submit a list of the directors and officers whom you propose to conduct the affairs of this institution, together with a brief history of the background of each of them.

The name of the proposed corporation referred to in your application, is Peoples Bank. This name is approved by me.

This commitment to permit you to organize a bank of course, is based on the condition that you will have obtained Federal Deposit Insurance which shall be effective con-

currently with your opening for business. In other words, no license to actually transact business will be issued until I am satisfied that you have obtained this insurance either through membership in the corporation or the Federal Reserve Bank. You are now in a position, if it is your intention to join the Federal Deposit Insurance Corporation, to file a notice of intention, but if you intend to obtain insurance through membership in the Federal Reserve System, you must wait until you file your articles of incorporation and then make your application.

It is noted from your original application that you proposed to capitalize by selling $300,000 par value of common stock and that you would have a surplus of $75,000. In a letter dated September 20th, forwarded after a discussion with you and Mr. Martin, we note that it is your desire not to commence business with a paid-up capital of $100,000 and a surplus of $25,000. There is no objection on my part to your commencing business at this capital structure and of course from time to time as the Bank Act requires it because of deposit liability or the nature of the business which you may assume commands it, you will increase the paid-up capital and surplus. Therefore, you are authorized to commence business in this territory with a paid up cash capital of $100,000 and a paid up cash surplus of $25,000. After you have incorporated and some time prior to the opening, your directors should pass a resolution apportioning this capital and surplus between departments subject to my approval. A certified copy of this resolution should be forwarded me and then my approval will issue as the apportionment of capital and surplus between departments.

Assuming that you are satisfied that the necessary capital can be raised and you can satisfy us as to the stock ownership, you should commence the preliminary work for drafting the articles of incorporation. These articles of course, will have to be submitted to this office and you should send an original and at least four copies. It might

be well to send a copy of the proposed set-up on or before the organizers adopt them and then we can determine if there are any changes necessary. When the articles are approved by us, they are then forwarded to the Secretary of State who retains the original, certifies and endorses his filing date on the copies and returns them to you for filing with your County Clerk. The County Clerk will endorse his filing date thereon, retain one copy and send the balance to you. One copy should then be forwarded here for our permanent records and upon notification by us that it has been filed here, your corporate existence commences.

Following the incorporation, it will be necessary to adopt the by-laws, which should first be submitted to this office for approval, and when finally passed, a certified copy is filed with us.

Subsequent to your incorporation the board can meet and pass the necessary resolution segregating the capital and surplus between departments and also pass such resolutions as are necessary in designating reserve and non-reserve depositaries. Immediately upon incorporation the directors should take an oath of office and then they should be filed in this department.

When you have completed all of the preliminaries and are in a position to furnish us with evidence that the deposits will be insured as of the date of opening, it will be necessary for you to determine the date upon which you wish to commence operations and upon being notified in sufficient time, I shall issue my license which will be your certificate of authority to engage in business. However, before the license is issued, you must also furnish us with a certificate of a bank showing that cash equivalent to your proposed capital and surplus is held on deposit for your institution.

It is my suggestion that you work closely with this office and we will give you every assistance in completing the de-

tails of organization so that you will suffer as little inconvenience as possible.

Forms for oath of directors, designation of depositaries, by-laws and articles of incorporation will be sent to you under separate cover.

A duplicate original of this letter is being forwarded you so that it may be filed with the federal authorities at the time you make your application for Federal Deposit Insurance.

Yours very truly,

GEORGE J. KNOX
Superintendent of Banks.

Enclosure

42 Filed Apr 15 1946

Exhibit No. 3

FEDERAL RESERVE BANK OF SAN FRANCISCO

October 21, 1941

Mr. Clyde Doyle,
Suite 612, Jergins Trust Building,
Long Beach, California.

Re: Your File No. 658

Dear Mr. Doyle:

This is to acknowledge receipt of your letter of October 15, 1941, enclosing a signed copy of letter dated September 24, 1941, addressed to yourself and John Gae Clark by Geo. J. Knox, Superintendent of Banks, in which permission is granted you to proceed with the organization of "People's Bank", Lakewood Village, Los Angeles County, California. It is noted that the permission to organize the bank is based on the condition that Federal Deposit insurance be obtained, to become effective concurrently with the

opening of the bank. As a medium to that end, you have chosen membership in the Federal Reserve System.

Section 9 of the Federal Reserve Act provides that—

"Any bank incorporated by special law of any State, or organized under the general laws of any State of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System . . ."

It, therefore, appears necessary that the organization of the subject bank and its incorporation be completed before an application for membership in the Federal Reserve System is filed.

There are enclosed three sets of approved application forms for your use when incorporation of the institution has been accomplished. There is also enclosed a copy of Regulation H pertaining to membership of State banking institutions in the Federal Reserve System.

When the board of directors has authorized the officers of the bank to make application, the application, together with all exhibits, should be prepared in triplicate and the original and one copy filed with the Federal Reserve Bank of San Francisco—third copy should be retained for the bank's record. The bank being newly organized and not yet licensed to do business, obviously all exhibits called for in the application cannot be furnished. If the bank shows any assets, a certified statement of resources and liabilities (Exhibit I) should be attached, as should also
43 certified copies of its articles of incorporation, together with certified copy of the Superintendent of Bank's certificate of approval thereof. Other exhibits seem inapplicable.

As soon after receipt of the application as is practicable, we shall make the investigation which is usual in connection with requests for membership, after which the application will be forwarded to the Board of Governors of the

Federal Reserve System, Washington, D. C. for its consideration and action thereon.

Should there arise any questions regarding the preparation or filing of the application, please feel free to call upon us.

Yours very truly,

R. B. WEST
Vice President.

Enclosures

44 Filed Apr 15 1946

Exhibit No. 4

December 2, 1941

Federal Reserve Bank of San Francisco
San Francisco
California

Re: Peoples Bank (Lakewood Village,
Los Angeles County, California)
Our File No. 658

Attention Mr. R. B. West, Vice-President

Gentlemen:

I refer you to your favored communication of October 21, 1941, and would advise briefly that the Articles of Incorporation duly certified to by Geo. J. Knox, Superintendent of Banks, were filed with the Secretary of State November 27, 1941, and a duplicate copy thereof was filed with the County Clerk of Los Angeles County on December 1, 1941. By inadvertence, two duplicates of these Articles of Incorporation thus filed and endorsed were mailed to Mr. Geo. J. Knox, Superintendent of Banks, 343 Sansome Street, San Francisco, California, when, I think, the requirements of his office were only "one". I am asking Mr. Knox to call a messenger and have one of these duplicates thus mailed to him this day immediately sent to your office to complete your file on this requirement.

Am advised by Mr. E. B. Martin, the recently chosen Vice-President in charge of operations of this bank that the stationery is all printed, the location has been rented and is now being equipped, the capital has been raised and all parties interested are very, very anxious for the bank to open at the earliest possible date, in order to take advantage of, amongst other things, the transfer of savings funds and holiday deposits which are certain to be available.

Enclosed in duplicate original is Application for Membership in the Federal Reserve System made by Peoples Bank, Lakewood Village, Los Angeles County, California.

Trusting you will find these all in good order and thanking you in advance for the earliest possible consideration and approval of this application, I remain

Respectfully yours

CLYDE DOYLE

CD/NBM
CC to Geo. J. Knox

45 Filed Apr 15 1946

Exhibit No. 5

APPLICATION FOR MEMBERSHIP
IN THE
FEDERAL RESERVE SYSTEM
MADE BY

PEOPLES BANK
(Legal name of applying bank)

Lakewood Village
Los Angeles County
(City or town)

California
(State)

46 At a meeting of the Board of Directors, Peoples Bank, Lakewood Village, Los Angeles County, California, duly called and held on the 28th day of November, 1941, the following resolution was adopted:

"Whereas, it is the sense of this meeting that application should be made on behalf of this bank for membership in the Federal Reserve System in accordance with the provisions of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto; and

"Whereas, under the provisions of the Federal Reserve Act, such a bank applying for membership in the Federal Reserve System is required to subscribe for stock in a Federal Reserve bank in a sum equal to six per cent of the paid-up capital stock and surplus of such applying bank;

"Now, therefore, be it resolved, That the President or Vice President and the Cashier or Secretary of this bank be and they are hereby authorized, empowered, and directed to make application for and to subscribe to the appropriate number of shares, of a par value of $100 each, of the capital stock of the Federal Reserve Bank of San Francisco, as determined on the basis of the capital stock and surplus of this bank as of the date upon which its membership in the Federal Reserve System becomes effective; to pay for such stock in accordance with the provisions of the Federal Reserve Act; to agree for and in behalf of this bank that, upon its admission to membership in the Federal Reserve System, it will comply with all the requirements of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant to law which are applicable to State banks and trust companies which become members of the Federal Reserve System; and to agree for and in behalf of this bank that reports and information regarding this bank may be interchanged between the Federal Reserve Bank of San Francisco and all State or Federal supervisory authorities having jurisdiction of this bank."

I hereby certify that the foregoing is a true and complete copy of a resolution duly adopted by the Board of Directors of this bank at a meeting thereof held on the date specified, at which a quorum was present, and that such resolution has not been amended or repealed and is still in full force and effect.

W. M. PARKER, *Secretary*
Peoples Bank
Lakewood Village
Los Angeles County,
California

Pursuant to the foregoing resolution, Peoples Bank, Lakewood Village, Los Angeles County, California, hereby makes application for the appropriate number of shares of the capital stock of the Federal Reserve Bank of San Francisco, of a par value of $100 each, as determined on the basis of the capital stock and surplus of this bank as of the date upon which the membership of this bank in the Federal Reserve System becomes effective; agrees to pay for the same in accordance with the provisions of the Federal Reserve Act; agrees that, upon its admission to
47 membership in the Federal Reserve System, it will comply with all the requirements of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant to law which are applicable to State banks and trust companies which become members of the Federal Reserve System; and agrees that reports and information regarding this bank may be interchanged between the Federal Reserve Bank of San Francisco and all State or Federal supervisory authorities having jurisdiction of this bank.

The following exhibits are attached to and made a part of this application:

Exhibit I. Two copies of a certified statement of condition of the bank as of November 28, 1941.

(The statement of condition is to be of a current date and, in so far as practicable, in the form appearing on the face of the latest form of report of condition submitted by State member banks to the Board (Form 105) and shall be supplemented by a statement of any contingent liabilities and any assets not shown by its books.)

Exhibit II. Two copies of the report of the latest examination of the bank made by State banking authorities. (The applying bank may, if it desires, request the State Bank Supervisor to forward the copies direct to the Federal Reserve bank.)

Exhibit III. Two copies of all letters of criticism, if any, received from the State banking authorities in connection with the two latest reports of examination and two copies of replies thereto. (If no replies have been made, a statement should be submitted in duplicate showing what action has been taken by the bank with respect to the criticisms and requests of the State banking authorities.)

Exhibit IV. Two copies of the charter (certificate of authority to commence business) and articles of incorporation of this bank with all amendments to date certified by the appropriate State official. (If applicant has been involved in a consolidation whereby all rights, franchises, and interests of constituent institutions pass by operation of law to the consolidated bank, information should be furnished, in duplicate, as to any corporate powers acquired by the bank by virtue of such consolidation other than those shown in its charter or articles of incorporation.)

Exhibit V. Two copies of a statement of powers or functions that have been or are now being exercised or performed other than those usual to commercial banking. (Full details should be given, in duplicate, if applicant acts directly or indirectly in any fiduciary capacity, insures or guarantees real estate titles, underwrites fidelity bonds or acts as surety, conducts an insurance business, deals in, sells, or distributes stocks or securities to dealers or to the public, sells real estate mortgages, or participations therein,

with or without guarantee, conducts a real estate rental or brokerage business, or performs any other functions not necessarily incidental to commercial banking.)

Exhibit VI. (a) Two copies of a list of all branches, branch offices, agencies, or receiving stations showing with respect to each the location, date established, volume and nature of business transacted, and reference to the provisions of State law covering the establishment and operation of the branch.

(b) Two copies of any approval or authorization of the establishment of each branch or agency by State authorities required by State law.

Exhibit VII. Two copies of all agreements executed within the preceding five years, if any, with respect to waiver or restriction of deposits, subordination of deposits, or contributions involved in any rehabilitation or reorganization of the bank with a statement of the amounts involved at the time of each agreement and any subsequent modification of the agreements or repayments. If any agreements of the kinds described were executed prior to
48 the preceding five years and as a result of which the bank is still obligated or subject to a claim of any kind, full information, in duplicate, regarding any such agreements should also accompany the application.

PEOPLES BANK,
Lakewood Village,
Los Angeles County,
California.
By E. B. MARTIN, *Vice-President.*

(Seal)
Attest:
W. M. PARKER, *Secretary.*

Note: If six per cent of the capital and surplus amounts to a sum not divisible by 100, the bank should apply for one additional share of stock for any excess or fractional part of $100.

When determining the appropriate amount of the subscription for stock in the Federal Reserve bank, the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation should be included with the capital stock and surplus of the institution, but the amount of capital notes and debentures sold to others should not be included.

In the case of a bank which has set up a reserve for dividends payable in common stock, whether in connection with the retirement of preferred stock, capital notes, or debentures, or otherwise, such reserve shall be regarded as surplus for the purpose of determining the amount of Federal Reserve bank stock which the bank is required to hold, provided such reserve has been established pursuant to a resolution of the board of directors of the bank involved, will become a part of the permanent capital of the bank and will not be used for any other purpose than the issuance of dividends, payable in common stock.

49 Peoples Bank

Lakewood Village, California

Statement of Condition as of

November 28, 1941

Assets:		Liabilities:	
Due from Other Banks—Demand	$125,000.00	Capital Stock	$100,000.00
Other Assets	None	Surplus	25,000.00
Total Assets	$125,000.00	Other Liabilities	None
		Total Liabilities	$125,000.00

50 Board of Governors of the
Federal Reserve System

Form 83E—(1936)

(Should be signed by at least three directors, and the cashier or treasurer. If the signing directors and officer have any reservation as to any of the clauses in the certificate, an explanation similarly signed should be attached to this sheet.)

Certificate of Directors and Cashier

We, the undersigned directors and officer of the Peoples Bank, Lakewood Village, Los Angeles County, California, certify, to the best of our knowledge and belief, that Exhibit I, attached hereto, contains a true and complete statement of the condition of this bank on the date specified; that such statement includes all of the assets and liabilities of the bank; that the capital stock is unimpaired (this clause does not apply to mutual savings banks); and that the supplemental information submitted with and made a part of the application of this bank for membership in the Federal Reserve System is true to the best of our knowledge and belief.

E. B. Martin
Walter Everts, Jr.
O. H. Ady
W. M. Parker, *Cashier*

Note: Type name under each signature.

Certificate of Counsel for Federal Reserve Bank

I, the undersigned, counsel for the Federal Reserve Bank of San Francisco, do hereby certify that, in my opinion, the Peoples Bank, Lakewood Village, Los Angeles County, California, is legally qualified, under its charter and the laws of the State of California, wherein it was incorporated, to purchase and hold stock in the Federal Reserve Bank of San Francisco, and to comply with the requirements of the

Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made in pursuance thereof, and that its attached application for membership in the Federal Reserve System is in due and proper form. Having made the necessary examination of such application and the accompanying papers which have a bearing on any legal matters involved and the State laws covering the organization and operation of this bank, I am satisfied as to the legal matters involved, except as otherwise noted.

ALBERT C. AGNEW
Counsel

Remarks:

Cash capital paid in $100,000. Population of Lakewood Village (unincorporated) estimated by Examiner L. B. Armstrong after visit to location 3500-4000 (X-Letter 4397). License to transact business withheld by Superintendent of Banks until membership in Federal Reserve System is perfected.

ALBERT C. AGNEW

Note: Inappropriate parts of the counsel's certificate should be marked out when it has been determined whether the bank is authorized to purchase stock in the Federal Reserve Bank or, in the case of a mutual savings bank or similar institution, to make the required deposit in lieu of a purchase of stock.

51 Filed Apr 15 1946

Exhibit No. 6

Board of Governors of the Federal Reserve System
Washington

Address Official Correspondence to the Board

Seal February 14, 1942

Mr. W. A. Day, President,
Federal Reserve Bank of San Francisco,
San Francisco, California.

Dear Mr. Day:

Reference is made to the application of the Peoples Bank of Lakewood Village, California, which has not yet been authorized to commence business, for membership in the Federal Reserve System. The Board has carefully considered the information accompanying this application, together with such other information as it has been able to develop with regard to the application, and has requested me to advise you that it is unwilling to approve the application on the basis of the information now before it. Please advise the applicant accordingly.

Very truly yours,

CHESTER MORRILL
Secretary

52 Filed Apr 15 1946

Exhibit No. 7

Federal Reserve Bank of San Francisco

February 20, 1942

Peoples Bank,
Lakewood Village,
Los Angeles County, California.

Dear Sirs:

Reference is made to your application for membership in the Federal Reserve System.

The Board of Governors of the Federal Reserve System has advised us that careful consideration has been given to the application, and we have been requested to inform you that the Board of Governors is unwilling to approve the application on the basis of the information now before it.

Yours very truly,

/s/ R. B. WEST
-Vice President.

53 Filed Apr 15 1946

Exhibit No. 8

February 20, 1942

Board of Governors of the
Federal Reserve System,
Washington, D. C.

Re: Membership Application
Peoples Bank,
Lakewood Village, California.

Dear Sirs:

We have just been informed of your action in rejecting our application for membership in the Federal Reserve System.

With the thought that a request for reconsideration might possibly be in order, we respectfully direct your attention

to the fact that major developments in defense industries adjacent to our proposed location have brought about a need for banking facilities that is far more urgent than when our application for membership was filed with you. There have been some changes made in our stock ownership, and in order that you may be informed of our current position, we wish to advise you that the 1000 shares of stock formerly held by the West Coast Securities Company have been sold to the following individuals who are prominent and well-known residents of Long Beach and immediate vicinity. These shares have been paid for from their own funds.

Clark J. Bonner	200 shares
Ralph B. Clock	200 shares
Chas. B. Hopper	200 shares
Harold R. Pauley	200 shares
Victor W. Hayes	200 shares

Messrs. Bonner, Clock and Hopper, original sponsors of this project, are no doubt dealt with in the report which is before you.

Harold R. Pauley, Vice President of the Petrol Corporation, Los Angeles, California, owns an additional 100 shares of our stock and has replaced his brother, Edwin W. Pauley, on our Board of Directors. Edwin W. Pauley finds it necessary to spend nearly all of his time in Washington. Mr. Harold R. Pauley has an estimated net worth of $300,000.00.

Mr. Victor W. Hayes, 3519 E. Second Street, Long Beach, California, is a pioneer citizen of Long Beach, is retired from active business and receives a substantial income from oil and rentals.

54 For your information, we have attached a copy of a new list of our stockholders.

In the light of the above information, we respectfully request that you reconsider our application for membership.

Yours very truly,

PEOPLES BANK
E. B. MARTIN,
Vice President

55 Filed April 15 1946

Exhibit No. 9

Federal Reserve Bank of San Francisco

February 21, 1942

Air Mail

Board of Governors of the
Federal Reserve System,
Washington, D. C.

Dear Sirs:

As requested in the Board's letter of February 14, 1942, we have informed the Peoples Bank of Lakewood Village, California, that the Board is unwilling to approve its application for membership in the Federal Reserve System on the basis of the information now before it, and a copy of our letter to the bank is enclosed.

We have now received a letter, dated February 20, 1942, addressed to the Board of Governors by the Peoples Bank, Lakewood Village, requesting the Board's reconsideration of the bank's application, and submitting the additional information that 1,000 shares of its stock originally subscribed for by the West Coast Securities Company has been purchased by and issued to other individual stockholders in equal amounts of 200 shares each.

The above mentioned letter is enclosed without comment or recommendation, but with the request that the Board inform us by wire of its conclusions with respect to the bank's request for reconsideration of its application.

Yours very truly,

R. B. West
Vice President.

Enclosures

56 Filed Apr 15 1946

Exhibit No. 10

Federal Reserve Bank of San Francisco

March 11, 1942

Airmail

Mr. E. B. Martin,
Vice President, Peoples Bank
Lakewood Village,
Los Angeles County, California.

Dear Mr. Martin:

With further reference to your letter of February 20, addressed to the Board of Governors of the Federal Reserve System, requesting reconsideration of your application for membership in the Federal Reserve System, and our telephone conversation of today, we are requested to inform you that the Board of Governors will be glad to reconsider your application upon a definite showing by the directors of your bank—

1. That arrangements have been made by Mr. John S. Griffith, San Marino, California, for financing the purchase of his stock in a manner different from that in effect at the time of our investigation of your bank's application for membership, and that such arrangements are consistent with the other provisions of this letter.

2. That some change has been made in the arrangements for the use of the furniture and fixtures whereby the bank will be under no obligation to Capital Company or any other part of the Transamerica group.

3. That neither Transamerica Corporation nor any organization affiliated or closely identified with Transamerica Corporation or any other bank holding company group has any interest, direct or indirect, in the applicant bank, and that the bank is in no manner obligated to any such organization.

4. That all stockholders have stated in writing that they have no agreements or understandings, expressed or implied, with respect to the sale or transfer of the stock of the bank to any such organization, and that they do not intend to enter into any such agreements or understandings.

5. That the bank was organized as a bona fide local, independent institution, and is expected to be continued as such.

57 In furnishing the information requested, it will be appreciated if it will be prepared in duplicate, and, upon its receipt, the material will be forwarded to the Board of Governors for its approval.

Yours very truly,

R. B. WEST
Vice President.

58 Filed Apr 15 1946

Exhibit No. 11

Peoples Bank
Lakewood Village, California

April 23, 1942

Mr. R. B. West, Vice President
Federal Reserve Bank of San Francisco
San Francisco, California

Dear Mr. West:

Replying to your letter of March 11, 1942 we are inclosing all in duplicate:

1. Statement by John S. Griffith relative to the re-financing of the purchase of his stock to meet the first requirement in the Reserve Board's proposal.

2. Copy of Declaration made by all of our directors which deals with Section 2, 3 and 5 of the Reserve Board's proposal.

3. Statement by all of our stockholders to comply with Section 4 of the Reserve Board's proposal.

We wish to offer, as an explanation, the information that at the time Mr. Armstrong made his field examination, a proposal had been made to us by a representative of the Bank of America to loan us some used fixtures, counters, etc., to fit out a temporary location. At that time we were disposed to accept their offer, however, when these used and quite obsolete counters and fixtures were installed some time later, we received a bill dated January 7, 1942; their job No. 4766 from the Capital Company, totaling $1,104.90 covering the purchase and installation of this equipment. We propose to pay this bill and, consequently, we do not feel that we are in any way obligated as a result of this transaction.

We shall appreciate your dispatching this information to the Reserve Board in Washington by air mail, requesting a reply by wire. The writer will communicate with you by telephone when this material has reached your desk to determine whether or not it will meet your requirements.

Yours respectfully,

E. B. MARTIN
Vice President

Inclosures

59

Long Beach, California
April 27, 1942

Federal Reserve Bank of San Francisco
San Francisco
California

Gentlemen:

In your letter of March 11, 1942 directed to Mr. E. B. Martin, Vice-President of Peoples Bank, you asked for a definite showing that arrangements have been made by Mr. John S. Griffith for financing the purchase of stock in Peoples Bank in a manner different from that in effect at the time of your investigation of the bank's application for membership.

Please be advised that the undersigned has effected a different arrangement for the financing of this stock and that said arrangements have not been made with Transamerica Corporation or any organization affiliated or closely identified with Transamerica Corporation or any other Bank Holding Company Group.

I have sold 500 shares of my stock to Mr. Norf James Jebbia, 2500 South Fremont Avenue, Alhambra, California and I have borrowed $11,875.00 upon 475 shares of my stock from his father, P. D. Jebbia, also at 2500 South Fremont Avenue, Alhambra, California.

Yours very truly,
JOHN S. GRIFFITH

60

Peoples Bank
Lakewood Village, California

March 23, 1942
[Apparently this date should be April 23.]

Federal Reserve Bank
San Francisco
California

Gentlemen:

We, the undersigned members of the Board of Directors of Peoples Bank, located at Lakewood Village, Los Angeles County, California, do hereby state as follows:

1. That the above mentioned bank is now organized as a bona fide local, independent institution, and is expected to be continued as such.

2. In view of the fact that the stockholders of the Peoples Bank have been asked to state in writing that they have no agreements or understandings, express or implied, with respect to the sale or transfer of the stock of the Peoples Bank to the Transamerica Corporation or any organization affiliated or closely identified with Transamerica Corporation or any other Bank Holding Company group, we assume that upon securing such signatures you will be

satisfied that the matters set forth in your letter of March 11th, 1942, have been complied with.

3. That the furniture equipping our banking quarters was purchased direct from Barker Bros., Los Angeles, California, and that we are not now and never have been obligated to Capital Company or any other part of the Transamerica group for the purchase of said furniture.

4. That the above mentioned bank is not now, and never has been obligated in any way, except by direct purchase agreement, to Capital Company or any other part of the Transamerica group for the installation of mechanical equipment, fixtures and safes in its banking quarters, and that said purchase agreement will be paid in full, as soon as permission to operate has been given by the State Superintendent of Banks.

61 In Witness Whereof, we have affixed our hands and seals this 23rd day of April 1942.

/s/ E. B. Martin
/s/ W. R. Martin
/s/ Walter Everts, Jr.
/s/ O. H. Ady
/s/ W. W. Werner
/s/ Ralph H. Clock
/s/ Clark J. Bonner
/s/ Harold R. Pauley
/s/ Chas. B. Hopper
/s/ R. C. Lewis

I, W. M. Parker, do hereby certify that I am the duly elected Secretary of Peoples Bank, located at Lakewood Village, Los Angeles County, California, and that the signers of the foregoing statements comprise the full membership of the Board of Directors of the above mentioned bank.

In Witness Whereof, I have attached my hand and the seal of this Corporation this 23rd day of April, 1942.

/s/ W. M. Parker
Secretary

Seal

62 March 23, 1942

Federal Reserve Bank
of San Francisco,
San Francisco, California

Gentlemen:

I, the undersigned, being a stockholder of the Peoples Bank, Lakewood Village, California, do hereby state that I have no arrangements, expressed or implied, with respect to the sale or transfer of the stock of the Bank which I own to either the Transamerica Corporation, or any organization affiliated or closely identified with Transamerica Corporation, or any other Bank Holding Company group, and that I do not intend to enter into any such agreements or understandings.

Yours very truly,

.....

63 Filed Apr 15 1946

Exhibit No. 12

BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM

May 6, 1942

Board of Directors,
Peoples Bank,
Lakewood Village, California.

Gentlemen:

The Board of Governors of the Federal Reserve System approves the application of the Peoples Bank, Lakewood Village, California, for stock in the Federal Reserve Bank of San Francisco, effective if and when the bank is duly authorized to commence business by the appropriate State authorities, subject to the numbered conditions hereinafter set forth:

1. Such bank at all times shall conduct its business and exercise its powers with due regard to the safety of its depositors, and, except with the permission of the Board of Governors of the Federal Reserve System, such bank shall not cause or permit any change to be made in the general character of its business or in the scope of the corporate powers exercised by it at the time of admission to membership.

2. The net capital and surplus funds of such bank shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, and its capital shall not be reduced except with the permission of the Board of Governors of the Federal Reserve System.

3. Such bank shall not engage as a business in issuing or selling either directly or indirectly, (through affiliated corporations or otherwise) notes, bonds, mortgages, certificates, or other evidences of indebtedness representing real estate loans or participations therein, either with or without a guarantee, indorsement, or other obligation of such bank or an affiliated corporation.

4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary thereof, acquires, directly or indirectly, through the mechanism of extension of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System.

64

In connection with the foregoing conditions of membership, particular attention is called to the provisions of the Board's Regulation H regarding membership of State

banking institutions in the Federal Reserve System as amended effective November 20, 1939, with especial reference to section 6 thereof. A copy of the regulation is enclosed.

The application for membership has been approved upon representations that the bank is a bona fide local independent institution and that no holding company group has any interest in the bank at the time of its admission to membership, and that the directors and stockholders of the bank have no plans, commitments or understandings looking toward a change in the status of the bank as a local independent institution. Condition of membership numbered 4 is designed to maintain that status.

If at any time a change in or amendment to the bank's charter is made, the bank should advise the Federal Reserve Bank, furnishing copies of any documents involved, in order that it may be determined whether such change affects in any way the bank's status as a member of the Federal Reserve System.

Acceptance of the conditions of membership contained in this letter should be evidenced by a resolution adopted by the Board of Directors and spread upon its minutes, and a certified copy of such resolution should be filed with the Federal Reserve Bank. Arrangements will thereupon be made to accept payment for an appropriate amount of Federal Reserve Bank stock, to accept the deposit of the required reserve balance and to issue the appropriate amount of Federal Reserve Bank stock to the bank.

The time within which admission to membership in the Federal Reserve System in the manner described may be accomplished is limited to 45 days from the date of this letter, unless the bank applies to the Board and obtains an extension of time. When the Board is advised that all of the requirements have been complied with and that the appropriate amount of Federal Reserve Bank stock has been issued to the bank, the Board will forward to the bank a

formal certificate of membership in the Federal Reserve System.

65 The Board of Governors sincerely hopes that you will find membership in the System beneficial and the relationships with your Reserve Bank pleasant. The officers of the Federal Reserve Bank will be glad to assist you in establishing your relationships with the Federal Reserve System and at any time to discuss with representatives of your bank means for making the services of the System most useful to you.

Very truly yours,

(Signed) L. P. BETHEA
Assistant Secretary

Enclosure

66 Filed Apr 15 1946

Affidavit of John S. Griffith

STATE OF CALIFORNIA
County of Riverside, ss.:

John S. Griffith being duly sworn, deposes and says:

I am a shareholder and Director of Peoples Bank, Lakewood Village, California, and have been such continuously since the organization of said bank; that as such Director and shareholder I was aware of the fact that said bank made application in the Fall of 1941 for membership in the Federal Reserve System and that said application was disapproved.

That during the latter part of February, 1942, as nearly as I now recollect, I was in Washington, D. C. and called at the offices of the Board of Governors of the Federal Reserve System in said city concerning said application; that I there met and talked to two members of said Board and the Secretary thereof; that as nearly as I now remember one of the said members was Honorable John McKee.

67 During the course of my conversation with the said Board members and Secretary I recall that statements were made to the effect that Secretary Morgenthau was opposed to increasing the number of banking offices of Bank of America and that it was stated that there was considerable agitation against increasing the banking interests of bank holding companies—so much so, that there was a prospect that legislation would be introduced to curb the expansion of bank holding companies. It was also stated in substance that upon assurances that the Peoples Bank was independent of Bank of America and Transamerica Corporation the Board might be disposed to reconsider the application.

JOHN S. GRIFFITH

Subscribed and sworn to before me this 4th day of April, 1946.

EDNA L. BROTT
Notary Public in and for the County of Riverside, State of California

(Seal)

My Commission Expires Feb. 7, 1948.

* * * * * * * * * * *

68 Filed Apr 15 1946

Affidavit of W. L. Andrews

STATE OF CALIFORNIA
City and County of San Francisco, ss.:

W. L. Andrews being duly sworn, deposes and says:

I am a Vice President and the Treasurer of Transamerica Corporation. This affidavit is submitted in support of the motion of the plaintiff, Peoples Bank, for summary judgment.

I am advised that the defendants' answer has not denied any allegation of the complaint and that such failure to deny has the same effect under Rule 8(d) of the Federal

Rules of Civil Procedure as an admission of every allegation, including the allegation of Paragraph IX that Condition No. 4 imposed by the defendants upon the plaintiff was and is arbitrary, capricious and discriminatory. However, because of my personal knowledge of the nature and some of the background of this admitted discrimination—knowledge which apparently was not possessed by the officers and directors of Peoples Bank at the time when
69 the condition was prescribed by the defendants—I have been asked to supply some of the more important factual details to the end that the Court may have a clear understanding of the significance of defendants' admission.

It appears from the affidavit of W. M. Parker, Secretary of Peoples Bank, submitted in support of this motion, that notification of the Board of Governors' disapproval of the original application of Peoples Bank for admission to membership in the Federal Reserve System was given by letter signed by Chester Morrill, Secretary to the Board, dated February 14, 1942. That letter stated no reason for the Board's disapproval. It is therefore significant that on the same day, February 14, 1942, the same Mr. Morrill, in behalf of the same Board of Governors, addressed another letter to Transamerica Corporation of which a copy, marked Exhibit No. 14, is annexed hereto and incorporated herein. That letter did not purport on its face to refer to the Peoples Bank application but the last two paragraphs seem to explain fully both the reason for Condition No. 4 and the manner in which it was brought into being. For the convenience of the court such paragraphs are quoted herein as follows:

"The Board's position in this matter is in accord with the policy, upon which there is unanimous agreement by the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, that the Federal bank supervisory agencies should, under existing circumstances,

decline permission for the acquisition directly or indirectly of any additional banking offices or any substantial interest therein by Transamerica Corporation, Bank of America N. T. & S. A., or any other unit of the Transamerica group.

"Please see that all persons in the Transamerica group who may be concerned with this policy are advised accordingly."

70 On behalf of Transamerica Corporation I replied to said letter of February 14, 1942 by a letter addressed to the Board of Governors of the Federal Reserve System, dated March 17, 1942. A copy of such reply, marked Exhibit No. 15, is annexed hereto and incorporated herein.

By a letter dated July 13, 1942, addressed to Transamerica Corporation and signed by R. B. West, Vice President of the Federal Reserve Bank of San Francisco, the continuance of the policy announced in Mr. Morrill's letter of February 14, 1942 was confirmed. That letter further confirmed that Mr. Leo T. Crowley, Chairman of the Federal Deposit Insurance Corporation, had discussed such policy with the Board of Governors and was "in complete accord". A copy of Mr. West's letter of July 13, 1942 is annexed hereto, marked Exhibit No. 16, and incorporated herein.

I replied to the last mentioned letter by a letter dated August 8, 1942, addressed to the Board of Governors of the Federal Reserve System. A copy of such letter is annexed hereto, marked Exhibit No. 17, and incorporated herein.

A further protest against the action so taken by the Board of Governors was made to the defendant Eccles as Chairman of such Board by a letter dated August 17, 1942, signed by A. P. Giannini, Chairman of the Board of Directors of Transamerica Corporation. A copy of that letter is annexed hereto, marked Exhibit No. 18, and incorporated herein.

71 The defendant Eccles replied to Mr. Giannini's letter of August 17, 1942 by a letter dated November 13, 1942. A copy of such letter is hereto annexed, marked Ex-

hibit No. 19, and incorporated herein. The first sentence in the next to the last paragraph of Mr. Eccles' letter reads as follows:

"It is our understanding that the position of the Comptroller of the Currency in this matter, referred to above, remains the same. We are advised that the Federal Deposit Insurance Corporation has indicated its unwillingness under existing circumstances to insure any newly organized State nonmember bank in which Transamerica Corporation has a substantial interest or any bank in the group which may withdraw from the Federal Reserve System. * * *"

To the best of my knowledge and belief, that statement made by a letter dated November 13, 1942, was the first occasion upon which any of the defendants or any one in their behalf made known to Transamerica Corporation that the Federal Deposit Insurance Corporation had agreed with these defendants to refuse to insure "any bank in the (Transamerica) group which may withdraw from the Federal Reserve System". Plaintiff, Peoples Bank, was then and is now the only bank in which Transamerica Corporation has any interest which has been subjected to a condition purporting to require it to withdraw from the Federal Reserve System as a result of some circumstance beyond the control of such bank. The quoted statement is a direct threat by the defendant Eccles that if Condition No. 4
72 should be invoked against Peoples Bank that bank would be unable to obtain Federal Deposit Insurance.

Mr. A. P. Giannini replied to said letter of November 13, 1942 by a letter addressed to the defendant Eccles, as Chairman of the Board of Governors, dated November 25, 1942. A copy of such letter is annexed hereto, marked Exhibit No. 20, and incorporated herein.

Receipt of the last mentioned letter was acknowledged by the defendant Eccles by a letter addressed to Mr. Giannini dated December 19, 1942, a copy of which is annexed hereto, marked Exhibit No. 21, and incorporated herein.

Under date of March 3, 1943, the defendant Eccles addressed a letter to Mr. A. P. Giannini, as Chairman of Bank of America N. T. & S. A., purporting to set forth "personal observations that have not been discussed with the other members of the Board" as to the reason for his views respecting "the kind of 'financial policy' referred to in recent correspondence and discussions." A copy of Mr. Eccles' letter of March 3, 1943, is annexed hereto, marked Exhibit No. 22, and incorporated herein.

Mr. A. P. Giannini replied to Mr. Eccles' letter of March 3, 1943 by a letter dated March 25, 1943, setting forth actual facts and figures upon the subjects mentioned in Mr. Eccles' letter. A copy of such letter of March 25, 1943, is annexed hereto, marked Exhibit No. 23, and incorporated herein. To the best of my knowledge and belief, the defendant Eccles has never replied to said letter of March 25, 1943, nor in any way disputed the correctness of any of the facts and figures therein set forth.

73 I am informed by counsel for the plaintiff that the originals of all of the letters hereinabove referred to from Mr. Morrill and Mr. Eccles will be available in Court upon the argument of this motion for summary judgment for inspection by the Court, if desired.

I have personal knowledge of the correspondence hereinabove referred to and of the facts embraced therein. The admittedly arbitrary, unreasonable, capricious and discriminatory character of Condition No. 4 is thus substantiated by documentary evidence that:

1st: The defendants have never purported to base the prescription of Condition No. 4 upon any authority of law;

2nd: They informed Transamerica Corporation for the first time, more than six months after the imposition of Condition No. 4 upon Peoples Bank, and apparently did not inform Peoples Bank even then that there had been an agreement between the Defendants and the Federal Deposit Insurance Corporation that Peoples Bank would be refused on a direct application for Federal Deposit Insur-

ance in the event that Condition No. 4 should be enforced;

3rd: The basis for Condition No. 4 was a purported "policy" adopted by secret agreement among defendants, Mr. Leo T. Crowley, Chairman of the Board of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency;

4th: Such "policy" has no qualitative basis whatever and has never been defined except in terms of bald and arbitrary prohibition and restriction applicable alone to
74 Transamerica Corporation and Bank of America N. T. & S. A. It is not a policy at all, but a cloak for oppression; and

5th: That neither Transamerica Corporation nor Bank of America has ever been a party to any proceeding of any character before any of the agencies referred to wherein any such "policy" was or could have been promulgated or imposed as a legal conclusion or incident.

Having had occasion to participate in the correspondence between the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of San Francisco, the Secretary of the Board and members thereof, I have paid particular attention to various official expressions concerning the authority of the Board in matters embraced within the scope of Condition No. 4. Matters of public record which demonstrate that in exacting Condition No. 4 the said Board knew that it was acting without authority of law are referred to below, annexed as exhibits hereto and for the convenience of the court incorporated herein.

1. Four extracts from Pages 34, 35 and 37 of the 30th Annual Report of the Board of Governors of the Federal Reserve System covering operations for the year 1943 (annexed hereto, marked Exhibit No. 24, and incorporated herein).

2. Extracts from testimony of defendant Eccles given on April 5, 1943 before the Committee on Banking and Currency of the House of Representatives in a hearing on HR1699, a bill to amend Sections 12B and 19 of the Federal

Reserve Act (annexed hereto, marked Exhibit No. 25, and incorporated herein).

75 3. Extracts from testimony of defendant Eccles given on May 10, 1943, at a hearing before the Committee on Banking and Currency of the House of Representatives on HR2634, a bill relating to Collateral Security for Federal Reserve notes (annexed hereto, marked Exhibit No. 26, and incorporated herein).

4. Extracts from Testimony of Mr. Leo T. Crowley, with whom, as hereinabove indicated, Mr. Eccles has stated he had an agreement about these matters, given on April 1, 1943 before the Committee on Banking and Currency of the House of Representatives in a hearing on the aforesaid HR1699 (annexed hereto, marked Exhibit No. 27, and incorporated herein).

5. Extracts from the testimony of counsel for the Board of Governors, speaking officially for the Board, on September 25, 1945 at hearings before Sub-Committee No. 3 of the Committee of the Judiciary, House of Representatives, on HR 2357, a bill which was sponsored by these defendants for the purpose of increasing their admittedly limited powers (annexed hereto, marked Exhibit No. 28, and incorporated herein).

So far as I am informed and as the fact appears from the official records of the Congress of the United States no bill for the purpose of increasing the admittedly limited powers of these defendants, has yet been passed by the Congress.

W. L. ANDREWS

Sworn to before me this 6th day of April, 1946.

JOHN A. BURNS
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires April 12, 1949.

76 Filed Apr 15 1946

Exhibit No. 14

Board of Governors of the Federal Reserve System
Washington

February 14, 1942

Transamerica Corporation,
San Francisco, California.

Gentlemen:

The Board has recently received through the Federal Reserve Bank of San Francisco a copy of a letter from a member bank, control of which was recently acquired by your Corporation, stating that the member bank has under consideration the establishment of several branch banks and that the letter is written for the purpose of securing the necessary approval from the Federal Reserve Board. The member bank's letter set forth certain facts with respect to proposed branches at two locations and stated that the letter would be supplemented by such formal applications as Federal Reserve regulations may require.

The Board gave careful consideration to the information submitted and to other pertinent information in its files and reached the conclusion that it should not approve the establishment of the proposed branches on the basis of the information now before it. The Federal Reserve Bank of San Francisco was requested to advise the member bank accordingly.

Should your Corporation have any plans for the further expansion of its interests in banks, either directly or indirectly, through the mechanism of extending loans to others for the purpose of acquiring bank stock, or in any other manner, you are requested to advise the Board through the Federal Reserve Bank of San Francisco before any such plans are consummated.

The Board's position in this matter is in accord with the policy, upon which there is unanimous agreement by the

Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, that the Federal Bank supervisory agencies should, under existing circumstances, decline permission for the acquisition directly or in-
77 directly of any additional banking offices or any substantial interest therein by Transamerica Corporation, Bank of America N. T. & S. A., or any other unit of the Transamerica group.

Please see that all persons in the Transamerica group who may be concerned with this policy are advised accordingly.

Very truly yours,

CHESTER MORRILL,
Secretary.

78 Filed Apr 15 1946

Exhibit No. 15

Transamerica Corporation
San Francisco, California,

March 17, 1942.

Board of Governors of the
Federal Reserve System,
Washington, D. C.

Gentlemen:

We have carefully considered, and have reviewed the statutes in connection with, your letter of February 14th forwarded to us by the Federal Reserve Bank of San Francisco in a letter dated February 21, 1942.

We note that it is desired that the Board of Governors be advised of any plans of this corporation to expand its interests in banks in any manner before such plans are consummated. We have always furnished any information requested respecting our investments and have permitted the examinations and have regularly rendered the reports re-

quired by law, but we are unable to find any requirement of law or regulation that information regarding our plans to acquire stock be communicated to the Board of Governors before any such plans are consummated. It does not seem to us that it would be practical to do so.

The acquisition of interests in banks, whether it be by the purchase of stock or otherwise, appears to be a matter within the responsibility and discretion of the directors and maangement of the corporation. It is believed that the directors and management could not properly surrender that responsibility because to do so would be to fail in their obligation to stockholders to conduct the affairs of the corporation according to their best judgment.

We note also the statement of the Board of Governors that "the Board's position in this matter is in accord with the policy upon which there is unanimous agreement by the Board, the Comptroller of the Currency and the Federal Deposit Insurance Corporation, that the Federal bank supervisory agencies should, under existing circumstances, decline permission for the acquisition directly or indirectly of any additional banking offices or any substantial interest therein by Transamerica Corporation, Bank of America N. T. & S. A. of any other unit of the Transamerica group."

79 While this corporation is not itself engaged in the banking business and therefore is not directly concerned with the establishment of additional banking offices, it cannot, on the basis of its present understanding of the statutes, accept such a ruling on behalf of itself or any bank in which it owns any interest.

We are one of a considerable number of bank holding companies doing business subject to laws enacted by Congress which were intended to have uniform application. Our present disposition would be not to object if Congress should determine to impose the death sentence on bank holding companies, even though it would be necessary to us to readjust our affairs in accordance with the law. We would even be willing to give consideration to some general plan

which would contemplate that there would be no additional branches granted to any bank for the duration of the war. In the meantime, however, we believe that we are entitled to and are assured fair and impartial treatment, and we cannot acquiesce in special treatment which appears to be contrary to the policy of the law as it now exists.

Federal statutes provide that national banks and state member banks are entitled to establish new branches when the law of the state grants the right, subject only to the approval of the particular supervisory agency to which the application is required to be made and the statutes prescribe the matters to be considered upon each such application. It is difficult to understand upon what basis the Board of Governors or any group of Federal Agencies can state in advance of any application that as to certain banks it will refuse to entertain an application to establish branches. It seems to us that the statutes require the respective Federal agencies to consider upon its merits any application made and there does not seem to be any basis for the advance rejection of any application for branches by any bank for the sole reason that this corporation has an interest in it.

Respectfully yours.

W. L. ANDREWS,
Vice President and Treasurer.

80 Filed Apr 15 1946

Exhibit No. 16

Federal Reserve Bank of San Francisco

July 13, 1942.

Transamerica Corporation,
San Francisco, California.

Dear Sirs:

Reference is made to the formal application, dated June 10, 1942, of the First Trust and Savings Bank of Pasadena to the Board of Governors of the Federal Reserve System

for its approval of the establishment of branches at Temple City and Alhambra, California.

The First Trust and Savings Bank of Pasadena first wrote to us in January, 1942 concerning its plans for the establishment of branches at these places, which letter was forwarded to the Board of Governors for its information and consideration. After careful consideration, the Board reached the conclusion that it should not approve the establishment of the proposed branches, and in its letter to you, dated February 14, 1942, the Board informed you of the action taken.

We are now advised by the Board that it has given careful consideration to the present application of the First Trust and Savings Bank of Pasadena for the establishment of branches at Temple City and Alhambra, and to the data submitted, but it does not feel that the facts submitted and the circumstances in the case justify any change in its policy as outlined in the previous correspondence above referred to. The Board further states that this matter has been fully discussed with Mr. Leo T. Crowley, Chairman of the Federal Deposit Insurance Corporation, and that he is in complete accord with this conclusion.

The views expressed above are transmitted to you at the request of the Board of Governors of the Federal Reserve System.

Very truly yours,

(signed) R. B. West
Vice President.

81 Filed Apr 15 1946

Exhibit No. 17

Transamerica Corporation

August 8, 1942.

Board of Governors of the
Federal Reserve System,
Washington, D. C.

Gentlemen:

We have received a letter dated July 13, 1942, from the Federal Reserve Bank of San Francisco, in which it is stated that the Board of Governors of the Federal Reserve System has determined to deny the application of the First Trust and Savings Bank of Pasadena to establish branches at Temple City and Alhambra for the reason that it has come to the conclusion that circumstances do not justify any change in the policy referred to in its letter of February 14, 1942, to Transamerica Corporation. In that letter the Board of Governors stated that in conjunction with the Comptroller of the Currency and the Federal Deposit Insurance Corporation it had determined upon a policy to decline permission for the acquisition of any additional banking offices by Transamerica Corporation or by any bank in which Transamerica Corporation was interested.

As we stated in reply to the previous letter from the Board of Governors, there does not appear to us to be any proper basis in law upon which the Board of Governors can reject an application for branches by any bank for the sole reason that this corporation has an interest in it. This seems to be particularly true in the case of the First Trust and Savings Bank of Pasadena, in which this corporation owns but 60 per cent of the outstanding stock. We believe that the reason assigned is not a lawful one as a basis for the rejection of an application and for that reason is capricious and discriminatory and is prejudicial not only to the First Trust and Savings Bank of Pasadena but also to the

shareholders of that bank, whether they be Transamerica, Corporation or the owners of the minority interest in the bank.

Yours very truly,

W. L. ANDREWS,
Vice President and Treasurer.

82 Filed Apr 15 1946

Exhibit No. 18

August 17, 1942

Honorable Marriner Eccles, Chairman,
Board of Governors,
Federal Reserve System,
Washington, D. C.

Dear Marriner:

I have been thinking over the communications that we have received from the Federal Reserve System during recent months and I find it difficult to reconcile the position taken by you and your associates with the assurances given to us when we had occasion to discuss the possibility of converting the Bank of America from the national to the state system. Both you and John McKee properly stated that our interests could count upon receiving the same fair and impartial treatment from the Federal Reserve Board as is accorded to any other institutions. This conflicts sharply with the views expressed in the Board's letter of February 14, 1942, addressed to Transamerica Corporation, in which the Board takes the position that, regardless of its merits, an application from any institution in the Transamerica group, or in any way connected with it, would receive an adverse ruling from the Board, this decision as to procedure having been reached in collaboration with the Comptroller and the Federal Deposit Insurance Corporation. In a subsequent letter to the Corporation from the Federal Reserve Bank, dated July 13, this arbitrary position of the Board is confirmed by the rejection of the appli-

cations of the First Trust and Savings Bank of Pasadena without any apparent reason even though the Superintendent of Banks of California had granted unconditional permits for the branches after finding that public convenience and advantage would be promoted thereby.

It must be obvious to you that such a position is not only discriminatory, but also injurious to Transamerica Corporation, and causes an adverse reflection on it, and it is also injurious to the minority stockholders in banks in which Transamerica Corporation holds an interest, as well as to the banks themselves.

We do not know of any legal justification for such action, and you failed in your letter to indicate what information, if any, you have in your files that would warrant it.

Practically all the members of the Board know me well enough, I think, to realize that when I have anything on my mind I do not hesitate to speak it out as frankly and directly as I can, and I feel it is only reasonable to expect the Board to adopt the same attitude toward me and tell me frankly what is the basis for its discriminatory treatment of the interests with which I am so closely connected. I doubt if there is any bank of comparable size in the country
83 that is any more liquid or in a more sound and healthy condition than Bank of America, and I think that a careful review of the last examination made of Transamerica Corporation by the Federal Reserve System will indicate that this Corporation also is in a sound condition, and the same applies to all of the banks in which it has an interest. At least, we did not note any serious criticism in reviewing the examination of Transamerica Corporation. Frankly, I should like to know what is the cause, imaginary or otherwise, of this discrimination; whether it be the condition of our institutions, their managements, or any other circumstance.

In the past ten years during which I have been responsible for the direction of the affairs of the Bank of America, on the national bank examiner's basis, exclusive of the preferred stock issue, it has added more than $57,500,000 to its

net sound capital structure over and above dividends paid in that period which aggregated $74,214,042.14, and which were fully justified.

While the growth of the bank has been rapid, other banks have grown rapidly too, some, in fact, more rapidly than our bank; and yet there is no apparent attempt to discriminate against those other banks. It should be obvious that our position, if anything, is stronger than that of most of the other rapidly growing banks, due to the fact that to a large extent our business is made up of a great number of small accounts, over 2,500,000 an over-all average of less than $765.00 per account, and deposits of more than $900,000,000 are in the time category where they are not subject to withdrawal without notice in an emergency. I am sure you will recognize that this condition does not exist in the other large banks which have relatively few accounts, but which are subject to having practically all their deposits withdrawn over night. Most of these other large banks have few, if any, savings or time deposits, and, therefore, are more vulnerable. The greater portion of this bank's assets is represented by cash, investments in securities of the United States Government, and loans guaranteed by the Government, such as FHA and guaranteed defense loans. In all of our more than $2,000,000,000 of assets, we have approximately only $250,000,000 in commercial loans, a substantial portion of which is supported by government guaranties. Our real estate loans are relatively small loans averaging less than $5,000 each, and virtually all of them are on an installment basis. The total of our investments and loans which are obligations of the United States Government and political sub-divisions, or are guaranteed by them, amounts to approximately $1,038,000,000 and we have in addition, cash and cash items approximating $400,000,000. Practically all of our assets could be sold at a premium which is not true of the other great banks of the country.

The banking premises which we own and occupy are all well situated in the center of the business districts of their

respective communities, and in the most valuable locations. The American Appraisal Company valued our premises toward the close of 1939, and arrived at a valuation figure greatly in excess of the carrying value of the properties on our books. We must not lose sight of the facts that
84 our premises are not all located in one community; that they are in the most desirable locations spread over the most rapidly growing and prosperous State in the Union, which State has experienced extraordinary population growth since the last census in 1940.

It is obvious that with such growth as is taking place in California, and that will continue to take place, additional banking facilities are necessary. I cannot understand why there should be this discrimination against us and our attempt to extend our services where the need has been definitely established when other institutions have no difficulty in opening new branches when they desire to do so.

The Bank of America, since its organization in 1904, has weathered all sorts of economic storms; I have seen it through several depressions and a bitterly contested proxy fight. Our correspondent banks and large commercial clients will testify to the fact that their experience in doing business with us has demonstrated to them that we have the best banking organization in the country, and I defy anyone to point out a more sound bank or competent management anywhere. With the greatest portion of our assets in cash, or guaranteed by, or consisting of, obligations of the United States Government and political subdivisions, and a proven earning power I challenge any of the bank supervisory agencies to point out a comparable situation.

Our other real estate owned amounts to the relatively insignificant figure of $4,800,000. The land contracts of Capital Company have a present balance of $16,670,530.74, and are the unconditional obligations of the company, which has a net capital structure of more than $33,459,000. Through such contracts, real estate of more than $55,000,000 has been liquidated, and most of this was acquired

through loans made by institutions taken over by us, in many cases at the request of banking authorities and to save the depositors from loss.

You are familiar with the fact that the Bank of America was compelled to take preferred stock when it did not need it, as we contended at the time, and our arguments in this respect have been overwhelmingly substantiated by subsequent events. Our institution took no advantage of charging off its assets at the time of the moratorium and offsetting such charge offs with preferred stock because we knew that such action was not necessary and that it imposed an unnecessary burden on the Government and an unjustifiable charge against the earnings of the bank. On the preferred stock that we were compelled to take, we have paid approximately $2,000,000 in dividends and have derived no benefit in return. The bank would certainly have been much better off to have added that $2,000,000 to the more than $40,000,000 added to the net sound capital structure, on the examiner's basis, in the past three years.

85 The only reason that I can ascribe to the Board's continued refusal, outside the law, to permit the normal extension of our services to places where banking service is obviously needed, is because it does not like the management. In my opinion there is certainly no justification for this attitude. This management took over the bank after the bitter proxy fight I have mentioned, and all of the losses which during the time of the moratorium would have been charged off by other banks through the medium of preferred stock were subsequently charged off by us out of earnings. We have had the extraordinary experience of surviving earthquakes, fire, panics, depressions, the moratorium, conspiracies, and a bitter proxy battle, and have stood up under constant harassment on the part of the bank supervisory authorities, and other Federal Agencies, and yet here we are today with capital funds, exclusive of preferred stock the greatest in the history of the bank, and our earning capacity unexcelled by any other bank. Only a sound and properly managed institution could have survived.

No bank in the country has cooperated more fully with the Government than the Bank of America, and in recognition of this fact the Treasury Department, despite the strenuous controversies of the past, has seen fit to award it the first citation to be issued to any bank in the United States for merit in promoting the war effort. We have sold more individual defense and war bonds than any other bank, at a continuing cost to this institution of more than $30,000 a month. Enclosed is the most recent report showing daily sales of bonds. We have financed war industries before and after Regulation V became operative to an extent not exceeded by any other bank. In the FHA program, we led the field and showed the way for other banks to cooperate; and, today, we lead the Nation in the volume of all types of FHA loans made and in cooperating with this administration in its other programs; and we are 100% behind the Government's program to win the war.

I do not think that any bank in the history of this country has been more persistently persecuted than the Bank of America. Can it be due to the fact that we do not represent the vested interests, and that throughout its history it has been a bank of the people, owned by many thousands of small stockholders? Or can it be that there is a more sinister motive? I hope for the sake of the future well-being of our country that this is not the case.

I must state to you frankly, Marriner, that I think the position of the supervisory agencies is not sound and in the long run cannot be sustained under our American system of free enterprise. Let us not expend our time and energies in contending over that fundamental of freedom-loving people of equality under the law. It seems inappropriate that governmental agencies should at this time be reaching out to usurp the legislative prerogatives, when there is so much need for the exercise of administrative functions to preserve the very existence of the Nation. If you do not like the existing laws, let us try to change them by

constitutional means. We should not in these times
86 resort to Nazi-Fascist methods of dictatorship.

This institution is certainly no instrument of evil, as the action of the Board toward it would seem to imply. Through the years, it has exercised consistently a beneficent and constructive influence on the welfare of the state and nation and the great number of Californians that it serves.

I think that in justice you should exert your influence to have the Federal Reserve Board subscribe to the spirit of fair and impartial treatment to which you have so frequently subscribed in the past. Won't you please let me know what you can do about it? If it is a matter of some technicality that is involved, can we not resolve that by agreeing to a friendly legal proceeding for a declaratory judgment defining the powers and authority of the Board, or for clarification of the statutes if they are ambiguous?

I should like to have your cooperation in seeking freedom from prejudice and discrimination and the attainment of the liberties which we as a nation are sacrificing and fighting to preserve for ourselves, and to secure for others.

With kindest personal regards to you.

Yours very sincerely,

A. P. GIANNINI

87 (Attached to Mr. A. P. Giannini's letter of August 17, 1942 to Marriner Eccles)

War Savings Bond Sales for Friday August 14, 1942

Series E	$528,731.25
Series F	21,848.50
Series G	65,800.00
Total	$616,379.75

Total amount to date as of the close of business August 14, 1942—$131,532,860.75.

88 Filed Apr 15 1946

Exhibit No. 19

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office of the Chairman
November 13, 1942.

Dear A. P.:

This is in reply to your letter of August 17, 1942, with reference to the action of the Board of Governors in denying the application for the establishment of branches at Temple City and Alhambra by the First Trust and Savings Bank of Pasadena, which is controlled by Transamerica Corporation through the ownership of a majority of the capital stock. Your letter was acknowledged by Mr. Clayton under date of August 21, 1942, immediately after I had left Washington for a few weeks' trip to the West.

Since returning to Washington, a great many pressing matters, including war financing, have taken up my entire time. Consequently, I have only recently had an opportunity to consider with Governor McKee, to whom you referred in your letter, and the other Members of the Board and some of its staff certain statements and charges contained in your letter, with which we cannot possibly agree.

For some time prior to January, 1942, the Comptroller of the Currency had repeatedly refused to approve expansion in the number of branches of important national banks in the Transamerica Corporation group. Shortly before that date, Transamerica Corporation obtained control of the First Trust and Savings Bank of Pasadena. In January, 1942, that bank wrote a letter to the Federal Reserve Bank of San Francisco, stating, among other things, that it had "under consideration the establishment of several branch banks," Temple City and Alhambra being mentioned specifically.

In view of previous discussions and understandings, the Board was surprised to learn of these plans for expansion. On February 14, 1942, it requested of the Federal Reserve Bank that the First Trust and Savings Bank of Pasadena be advised, before it took any further steps to consummate its plans, that the Board had given careful consideration to the information submitted and to other pertinent
89 information in its files and had reached the conclusion that it should not approve the establishment of the proposed branches on the basis of the information before it. The Board also considered it desirable to inform Transamérica Corporation directly of the action on the Pasadena application and to express again to its management the Board's views in the matter of expansion. Accordingly, on the same date it addressed a letter to the Corporation in which it was stated:

"Should your Corporation have any plans for the further expansion of its interests in banks, either directly or indirectly, through the mechanism of extending loans to others for the purpose of acquiring bank stock, or in any other manner, you are requested to advise the Board through the Federal Reserve Bank of San Francisco before any such plans are consummated.

"The Board's position in this matter is in accord with the policy, upon which there is unanimous agreement by the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, that the Federal bank supervisory agencies should, under existing circumstances, decline permission for the acquisition directly or indirectly of any additional banking offices or any substantial interest therein by Transamerica Corporation, Bank of America N. T. & S. A., or any other unit of the Transamerica group.

"Please see that all persons in the Transamerica group who may be concerned with this policy are advised accordingly."

Nevertheless, the First Trust and Savings Bank of Pasadena thereafter continued its plans and on February 28, 1942, entered into a contract to assume deposits and take over assets of the Temple City National Bank, with a view to operating a branch at that location. On June 10, 1942, the bank filed a formal application for the establishment of branches at Temple City and Alhambra. On July 10, 1942, the Board declined this application and requested that the bank and Transamerica Corporation be advised accordingly.

It is our understanding that the position of the Comptroller of the Currency in this matter, referred to above, remains the same. We are advised that the Federal Deposit Insurance Corporation has indicated its unwillingness under existing circumstances to insure any newly organized State nonmember bank in which Transamerica Corporation has a substantial interest or any bank in the group which may withdraw from the Federal Reserve System. As for the Board's position, until it is satisfied that the financial policies pursued by Transamerica Corporation and its affiliated institutions are consistent with the public interest, it will consider as unsound their efforts to continue an expansion program by whatever means, including the organization of new State banks, the acquisition of control of existing State banks, or the conversion of national banks to State banks, and the establishment of branches thereof. In addition, where the change or conversion from one jurisdiction to another is for the purpose of avoiding proper restrictions or requirements of other Governmental agencies, the Board does not propose to be used as a means of avoiding such restrictions or requirements, considered by the Board to be justified under existing circumstances.

The foregoing will indicate some of the more important considerations underlying the Board's position in this matter. In view of our previous discussions with representatives of your organizations, it is felt unnecessary to go into further detail. However, as you well know, whenever you

or any of your associates feel that you have a just grievance to take up with the Board, or that you have some additional information to assist the Board in its deliberations, you are always welcome to call in person for a more complete and frank discussion than is practicable through correspondence.

Sincerely yours,

(signed) M. S. Eccles
Chairman

Mr. A. P. Giannini,
Chairman of the Board,
Transamerica Corporation,
San Francisco, California.

91 Filed Apr 15 1946

Exhibit No. 20

November 25, 1942

Hon. Marriner S. Eccles, Chairman,
Board of Governors of
Federal Reserve System,
Washington, D. C.

Dear Marriner,

I wish to acknowledge receipt of your letter of November 13 which was written in reply to my letter of August 17, 1942. I trust that in what I shall have to say concerning your reply I shall not seem to be unduly critical for I have no other thought than that of sincerely attempting to arrive at a basis of understanding.

In so far as your letter reviews correspondence which has taken place between the Board of Governors and Transamerica Corporation, and in so far as it recites the now historical facts with reference to the Comptroller's repeated refusals to approve branches of important national banks in the Transamerica group, while granting them to competitive institutions, it recites facts with which we are both entirely familiar.

But those matters are somewhat beside the main point of the inquiry which I addressed to you in August. I think if you will read my letter again you will be impressed with the earnestness of my desire to know why and upon what basis, legal or otherwise, action has been taken which precludes banks in which Transamerica Corporation has an interest from transacting their business upon the same terms and upon an equality with other banks. The correspondence to which you refer, some of which you quote in your letter, appears to me to show that the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation and the Comptroller of the Currency have entered upon a course of arbitrary and discriminatory action where Transamerica is concerned. I was hopeful that your reply, instead of reiterating the circumstances which appear to show this, would enlighten me as to any existing foundation which might be relied upon to justify the course which has been pursued for some time.

You quote from the Board's letter to Transamerica of February 14, 1942, in which your Board advises Transamerica that on the basis of information submitted and other pertinent information in its files it has reached the conclusion that it should not approve the establishment of proposed branches of the First Trust and Savings Bank of Pasadena. We have as yet no knowledge of what the "other pertinent information" referred to by the Board consists, and we regard the facts accompanying the application to show beyond question a basis for approval such as would be granted in the case of any other applicant.

You also quote that portion of this letter of notification which states that the Board's position is in accord with the policy which has been agreed to by the Board, the Comptroller and the Federal Deposit Insurance Corporation to deprive Transamerica Corporation or any bank in which it has an interest of the benefit of the law under which a bank may properly conduct its business, including the laws providing for the establishment of additional branches for the convenience of patrons and the pub-

lic. I am still at a loss to know the basis for this policy and I have been amazed to find that it would be agreed upon, declared and put into effect without any opportunity for the interested parties to be heard or even to know the circumstances relied upon to justify it. I wish that you would write me and enlighten me upon this score.

Instead of aiding in an effort to reach common ground, your letter would seem to introduce an additional obstacle to mutual understanding. You say: "As for the Board's position, until it is satisfied that the financial policies pursued by Transamerica Corporation and its affiliated institutions are consistent with the public interest" it will consider as unsound any effort to expand its banking business. Perhaps we have been mistaken in believing that matters of public policy were the primary concern of the legislative bodies rather than of the administrative boards or officers. We have always earnestly endeavored to bring our activities into accord with the public policy evidenced by the various statutes applicable to the particular business. It would seem that if in order for banks in which Transamerica Corporation is interested as a stockholder to conduct a banking business on terms of equality with others engaged in the same business we must first satisfy the Board of Governors of the Federal Reserve System that the financial policies of the Corporation are consistent with the Board's view of the public interest, we should at least be advised as to what that view is.

Your letter contains a sentence, the implications of which are so utterly foreign to any purposes of mine, that I cannot let it pass unchallenged. You say: "In addition, where the change or conversion from one jurisdiction to another is for the purpose of avoiding proper restrictions or requirements of other Governmental agencies, the Board does not propose to be used as a means of avoiding such restrictions or requirements, considered by the Board to be justified under existing circumstances." I am completely at a loss to understand what you are driving at. I know I have never even remotely suggested to you or to the Board

that there was any thought of using it as a means of avoiding any proper restrictions or requirements of other governmental agencies. In my experience with governmental agencies I confess I have at times felt—yes, been convinced to the point of firm conviction—that improper restrictions and requirements have been attempted to be imposed and that at times institutions with which I have been connected have been victims of arbitrary and discriminatory action. I recall expressing such convictions to you. I have always attempted to correct such unfortunate situations in so far as it was possible to do so, but I have never objected to the full and proper exercise of supervisory discretion legally vested in any public supervisory authority. I well know that I have never suggested to you or to any one else in authority a proposal to use the Board or any other authority for the purpose of avoiding any *proper* restrictions or requirements. I think you will recall, too, that at one time when we were contemplating converting to a state member bank your attention was specifically directed to the various provisions of the law with respect to approval of branches and inquiry was made as to whether or not the Board would be likely to be governed by the standards stated in passing upon such a matter or whether foreign considerations would be deemed controlling. But I have never at any time suggested that legal standards for the exercise of discretionary action by supervisory authorities be departed from.

While your letter is distinctly disappointing in the respects which I have indicated above, you may rest assured that I shall exert every effort to bring about such an adjustment in the relations of the institutions with which I am associated and all appropriate supervisory authorities as may be consistent with justice and fairness to all.

As stated before, Transamerica Corporation cannot submit to discrimination. As a basis for mutual understanding in which all thought of discrimination would be permanently eliminated, it would seem proper that you should ad-

vise me of any information which your Board has regarded as pertinent in deciding the matters referred to in your communications. May I hear from you soon?

Sincerely yours,

A. P. GIANNINI

P. S.

With regard to the references in your correspondence to the expansion of the interests of Transamerica in banks you might be interested in taking note of the fact that on December 31, 1931, shortly before I was returned to its management, the investments of Transamerica Corporation in national banks, member banks and state nonmember banks aggregated $139,488,939.53 and that as of September 30, 1942
94 the similar investment was $65,067,736.87. It had decreased 53%. You might also be interested in noting that as of December 31, 1940, the investment stood at $83,521,086.49 and that since that time it has decreased approximately $9,000,000 per year to the amount as of September 30, 1942 of $65,067,736.87, or a decrease in the past two years of 22%.

A.P.G.

95 Filed Apr 15 1946

Exhibit No. 21

Board of Governors of the Federal Reserve System

December 19, 1942.

Mr. A. P. Giannini,
Chairman of the Board,
Transamerica Corporation,
San Francisco, California.

Dear A.P.:

I have yours of November 25 in which you acknowledge receipt of my letter of November 13 respecting the position of the Board in the matter of expansion of banking institutions in the Transamerica group.

I could not possibly agree with you that the Board, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency have entered upon a course of arbitrary and discriminatory action where Transamerica is concerned nor could I possibly agree that any policy has been declared and put into effect without any opportunity for the interested parties to be heard. I believe that you are fully informed as to the Board's position and of all the facts upon which it is based, and I am convinced that continued discussion would only involve us in lengthy arguments as to the correctness of your impressions regarding the soundness of the Board's position and the sincerity of its motives. However, any time you or any of your senior associates are in Washington, I shall be glad to arrange further conferences on this matter.

With kind personal regards, I am

Sincerely yours,

(signed) M. S. Eccles
M. S. Eccles,
Chairman.

96 Filed Apr 15 1946

Exhibit No. 22

Board of Governors of the Federal Reserve System
Washington

Office of the Chairman
March 3, 1943.

Mr. A. P. Giannini,
Chairman,
Bank of America N. T. & S. A.,
San Francisco, California.

Dear A.P.:

In looking over the published statement of Bank of America as at December 31, 1942, and the changes from December 31, 1941, several matters interest me. Most con-

spicuous is the tremendous growth in demand deposits of $625 million odd, which, together with $52 million odd of savings and time deposits, produced an over-all deposit growth for the year of over $677 million. In stark contrast to that increase, however, was the insignificant increase of $23,716 in the total capital funds of the bank.

I realize that no bank located in a war production area can be expected to increase its capital funds in any normal proportion to its deposit growth. On the other hand, the small addition referred to hardly indicates conservative management and might be considered an example of the kind of "financial policy" referred to in recent correspondence and discussions. In a situation of this kind, it might well be desirable to reduce dividends so as to add a reasonable amount to total capital funds.

The foregoing are personal observations that have not been discussed with the other Members of the Board. I felt at liberty, however, to pass on these thoughts, feeling sure you would take them in the spirit in which they are given.

With best wishes, I am

Sincerely yours,
/s/ M. S. Eccles
M. S. Eccles,
Chairman.

97 Filed Apr 15 1946

Exhibit No. 23

San Francisco, California
March 25, 1943

Honorable Marriner S. Eccles,
Chairman, Board of Governors,
Federal Reserve System,
Washington, D. C.

Dear Marriner :

I would have been pleased to have discussed with you and all those present at our February conference in Washington

the subjects raised in your letter to me of March 3. In the circumstances, however, I shall gladly give you in writing the most pertinent facts and my conclusions with reference to the growth of deposits of Bank of America in 1942, its capital structure and the bank's financial policy.

It is true that the Bank of America experienced a tremendous growth of deposits in 1942, but it is also true that the circumstances which resulted in the growth of deposits generally are regarded as abnormal, and I understand the supervisory agencies have agreed that capital funds are not expected to be maintained in proportion to deposit growth, and you, too, so state in your letter.

If you are inclined to be critical of our "financial policy" it would perhaps be well to consider some additional facts which enter into that policy. While gross deposits increased during the year from $1,908,384,000 to $2,586,141,000 or $677,756,000, there was an increase in cash of $175,975,000 and in Government obligations of $549,077,000, or a total increase in assets not involving credit risk of $725,052,000. This increase more than off-sets the entire deposit growth. Government obligations, obligations of Federal agencies, and Municipals make up 97.6% of our entire bond account, and of the Governments $358,194,000 are due within one year. In our corporate account 86.6% of the bonds carry a rating of triple B or better.

You have available the reports of examination of the bank over a number of years. If you will review them you will find that in the report of examination as of April 28, 1938, completed September 1938, which was the principal basis for the discussions resulting in the promulgation of the "Requirements of the Comptroller of the Currency", the examiner gave the bank a net sound capital structure of $96,447,600. (We took exception to this and our judgment has been vindicated by subsequent events.) On the first examination in 1942, as of January 16, the examiner reported a net sound capital structure of $152,474,224

98 and in the next examination, as of July 31, 1942, $156,052,055. Adjusted on the examiner's basis to

the end of 1942, the net sound capital structure would be $159,835,233, or an *increase* in the period from *January 16, 1942* to *December 31, 1942*, of approximately *$7,400,000*. In the period from *April 1938* to the end of *1942*, the *improvement in net sound capital* structure on the examiner's basis, exclusive of outstanding preferred stock, is *more* than *$40,000,000*.

At December 31, 1942, substantially all losses classified by the examiner had been provided for and the doubtful classification of assets aggregated less than $1,140,000. In considering these figures, too, you should bear in mind the fact that during the year 1942 the already substantial margin of actual value of bank premises and other real estate over book carrying values was further increased by the use of $2,437,617 of reserves to effect a reduction of the book value of those investments in addition to normal depreciation. This adjustment completed the observance of the Comptroller's requirements with regard to these items.

If you are inclined to make comparisons, I would suggest that you go a little deeper into the picture. Starting, let us say, with the capital structures of the five largest national banks in the United States at the year-end December 31, 1934 (the end of the first year following the banking holiday), and comparing their capital structures eight years later or at December 31, 1942, you would find that the Bank of America increased its capital funds $60,465,000 or 60.5%; that the increase for the Continental Illinois National Bank & Trust Company was $36,115,000 or 35.4%; First National of Chicago—$16,706,000 or 25.17%; Chase National—$19,720,000 or 8.37%; and the National City Bank—$13,020,000 or 7.9%.*

In this group the Bank of America is the only bank which had outstanding any preferred stock at the end of 1942, the other four banks having previously retired in the aggregate $175,000,000 of preferred stock. However, if the Bank of America had retired all of its preferred stock without otherwise altering its capital account, it would have increased its

* Authority for these figures is Moody's Banks, Insurance, Real Estate, Investment Trust Manual.

capital funds during the same eight-year period a net of $37,425,200 or 37.4%. In other words, it would still have been the Number One national bank in the country with respect to the dollar increase in its capital account and, percentagewise, it would still have exceeded any of the other four large national banks.

If you care to pursue the like comparison still further, I would suggest that you compare this bank with other large banks in California and you would find this to be the situation:

Capital funds in this eight-year period of American Trust Company, including preferred stock of $7,500,000 as of December 31, 1942, have increased $3,633,000 or 16.08%; Crocker First National Bank—$1,672,000 or 12.5%; Farmers & Merchants Bank of Los Angeles—$601,000 or 7.5%; Wells Fargo Bank & Union Trust Company—$908,000 or 5.2%; and Security-First National of Los Angeles—$604,000 or 1.1%. During the same period California Bank of Los Angeles retired 80% of its $4,000,000 preferred stock and, treating an abnormal reserve in 1934 as capital funds, shows a decline of $219,000 or a little more than 2% in its aggregate capital funds; and Bank of California N. A. of San Francisco decreased its capital funds $326,000 or 2.2%.*

It should not be necessary for me to tell you or any other person experienced in banking that results such as are reflected in the above figures are not the product of theorizing or wishful thinking. They are the proofs of constructive policies and sound management.

In view of this situation and with the facts before you which I have stated in this letter, I think you will appreciate that there is a very substantial foundation for the complaint I have repeatedly stated to you and other supervisory authorities in Washington against this bank's being treated on an exceptional basis from others. To settle the question of capitalization so far as this bank is concerned once and for all, and to put an end to attempted discrimina-

* Authority for these figures is Moody's Banks, Insurance, Real Estate, Investment Trust Manual.

tion against it, I am perfectly willing to say now that this bank will conform to any ruling that will be made by competent authorities in Washington with respect to capitalization, provided only that such requirements are of general applicability.

I think you would be interested to know that our earnings continue at about the same level as in 1942, after making provision from earnings of $300,000 per month for taxes. But there are some features with respect to our earnings position that have perhaps not been brought to your attention. We have, as you know, a very large volume of time deposits and in this period of low interest rates this gives us a position of flexibility with respect to the payment of interest on such deposits. Because of our satisfactory earnings we have been paying a rate in excess of that paid in other parts of the country and in 1942 our payments amounted to $10,814,962. It would be possible for us at any time to lower our interest rates on time deposits or we might even discontinue payment of interest on such deposits altogether as many large banks in other parts of the country have already done. I do not say that this is in contemplation, but it is another favorable element in taking an over-all view of this bank.

I am pleased, Marriner, to discuss these matters with you. I know you are interested, and any mental reservations, such as your letter indicates, should be dispelled by this more complete information. I know that it is not your purpose simply to find something to complain about. Perhaps you will better understand from these facts why we are proud of the record of Bank of America and why we feel that supervisory authorities should not assume a discriminatory attitude towards it, but rather should treat it as an example for other progressive banks to follow. I should very much like to clear up once and for all the sources of irritation between this institution and supervisory agencies since they are quite unwarranted and since they have the effect of hampering the institution and its management in their war effort and in the constructive

development of this area. I think you can do a great deal to bring this about.

If you have any further thoughts I should be very glad to discuss them fully and frankly with you. I think you will not only understand why we are proud of our accomplishments in the past but will appreciate that on the record of its performance this institution gives promise of even greater accomplishments in the future.

May I again say that I enjoyed my visit with you and the members of the Board very much and that I await with deep interest the tangible results of our conference.

My best wishes to you and the gentlemen who participated in the conference.

Sincerely yours,

Chairman of the Board.

101 Filed Apr 15 1946

Exhibit No. 24

EXTRACTS FROM THIRTIETH ANNUAL REPORT OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM COVERING OPERATIONS FOR THE YEAR 1943.

[p. 34] "Recommended Legislation On Bank Holding Companies.

"In the Banking Act of 1933 the Congress undertook to provide for the supervision of bank holding companies. The Board, in the light of its experience, believes the present law inadequate to accomplish the purposes for which it was enacted, * * *."

[p. 35] "* * * the only limitation which the law imposes upon the control of subsidiary banks by bank holding companies is that the latter may not vote their stock in a controlled bank without securing a voting permit from the Board, and it is only as an incident to obtaining the voting permit that there is any regulation at all. * * *"

[p. 37] "There is now no effective control over the expansion of bank holding companies either in banking or in

any other field in which they may choose to expand. * * *

"It is recognized that bank holding companies have served a useful purpose in some areas of the country and have contributed banking services which might not otherwise have been available or might not now be available, and a requirement that bank holding companies be immediately dissolved would more likely result in the liquidation of controlled banks in certain areas than in their sale to and continued operation by new owners.

"For these reasons the Board recommends that immediate legislation be enacted preventing further expansion of existing bank holding companies or the creation of new bank holding companies. * * *"

102 **Exhibit No. 25**

Filed Apr 15 1946

EXTRACTS FROM HEARINGS BEFORE THE COMMITTEE ON BANKING AND CURRENCY, HOUSE OF REPRESENTATIVES, 78TH CONGRESS, FIRST SESSION, ON H. R. 1699, A BILL TO AMEND SECTION 12B AND SECTION 19 OF THE FEDERAL RESERVE ACT.

From testimony of Mr. Marriner S. Eccles, Chairman of the Board of Governors of the Federal Reserve System, on April 5, 1943.

[Page references are to official printed record of transcripts.]

[pp. 132-133] "Mr. Patman. Now, one question on this Trans-America Corporation. Have you given consideration to that set-up, Mr. Eccles?

"Mr. Eccles. In what way?

"Mr. Patman. In the way of it being a menace to the country?

"Mr. Eccles. Well, I would not want to say it has been a menace to the country.

"Mr. Patman. Or it adopts a bad policy that, if pursued, would eventually become a menace?

"Mr. Eccles. Are you referring to the Trans-America policy, or the Bank of America?

"Mr. Patman. I mean just exactly what I said—Trans-America.

"Mr. Eccles. I have given considerable thought to the operations and the development of Trans-America.

"Mr. Patman. Do you look upon that as a wholesome undertaking?

"Mr. Eccles. No, I do not. I agree that Trans-America, in their purchase of stock of banks and in their purchase of stock of corporations that have nothing whatever to do with banks is pursuing what, to my mind, is an improper and unsound policy.

"Mr. Patman. Do not you have some power and authority to deal with that situation?

"Mr. Eccles. We do not.

"Mr. Patman. Have you ever asked for any?

"Mr. Eccles. No, we have not. * * *"

103 **Exhibit No. 26**

Filed Apr 15 1946

EXTRACTS FROM HEARINGS BEFORE THE COMMITTEE ON BANKING AND CURRENCY, HOUSE OF REPRESENTATIVES, 78TH CONGRESS, FIRST SESSION, ON H. R. 2634, A BILL TO EXTEND THE PERIOD DURING WHICH DIRECT OBLIGATIONS OF THE UNITED STATES MAY BE USED AS COLLATERAL SECURITY FOR FEDERAL RESERVE NOTES.

Testimony of Marriner S. Eccles, Chairman, Board of Governors of the Federal Reserve System on May 10, 1943.

[Page references are to official printed record of transcripts.]

[pp. 14-15] "Mr. Patman. Mr. Eccles, I do not want to take the time of the committee on this question, but I would like for you to say this one way or the other. I presume, however, that your answer is that unless you can get

better cooperation out of Transamerica you would look with favor upon advocating legislation that would curb the bank holding companies?

"Mr. Eccles. That would give the Board the power to require what they would consider a policy in the public interest.

"Mr. Patman. Now, you do not look with favor upon the activities of Transamerica Corporation, do you?

"Mr. Eccles. I do not. I would like to qualify that. I do not look with favor upon the acquisition by Transamerica of stock in concerns that have no relationship to banking, nor do I look with favor upon the acquisition by Transamerica of stock in independent unit banks as a means of evading the requirements of the Federal agencies who will not permit them to establish further branches. * * *"

[pp. 20-21] "Mr. Ford. The Bank of America and Transamerica have made repeated charges that they have been discriminated against. Do you not think it would be a wise thing to have them up here before this committee and get the low-down on it?

"Mr. Eccles. I think it is up to this committee to determine that.

"Mr. Ford. It is up to the committee to determine that, but I am trying to get your off-side opinion on that.

104 "Mr. Eccles. If this committee wants to investigate them, I think they should pass a resolution that would recite the purposes for their being called up here, or a bill that deals with the holding-company situation should be introduced, and that would be a basis for holding hearings, and that would bring them up before the committee; but just merely to bring them up before the committee I do not think would serve a very useful purpose.

"Mr. Ford. Well, I am not so sure about that. This committee is charged with the responsibility of banking legislation, and it is one of the important banking institutions of the country. It is continually saying that it is being discriminated against. I think probably it would not be off color at all to bring them up here and find out what it

is about, and then, after that questioning, with the people that they are accusing here, if we thought it necessary to enact further legislation, we could do it. I do not think that would be a bad plan at all.

"That is all.

"Mr. Eccles. Well, I certainly would have no objection to it. Whatever the facts are in the situation, there could be no harm in bringing them out. I have felt for some little time that the Congress either should give possibly the reserve Board powers to deal with this holding company situation, particularly in the case of Transamerica, or they should take the responsibility. It may well be that the action of the Federal agencies in refusing to grant charters for additional banks or permits to establish additional branches is contrary to what Congress would feel ought to be done."

105 **Exhibit No. 27**

Filed Apr 15 1946

EXTRACTS FROM HEARINGS BEFORE THE COMMITTEE ON BANKING AND CURRENCY, HOUSE OF REPRESENTATIVES, 78TH CONGRESS, FIRST SESSION, ON H. R. 1699, A BILL TO AMEND SECTION 12B AND SECTION 19 OF THE FEDERAL RESERVE ACT.

From testimony of Honorable Leo T. Crowley, Chairman, Federal Deposit Insurance Corporation, on April 1, 1943.

[Page references are to official printed record of transcripts.]

[p. 37] "Mr. Wright. As you gentlemen know I am a new member of this committee and I am anxious to get a little information on the point of branch banking. Is there any control exercised over branch banking by the Federal Deposit Insurance Corporation in connection with branch banking?

"Mr. Crowley. Yes, we have three agencies for the control of branch banks extending to banks under their supervision. We have no control over stopping a holding company from extending their ownership of corporate banks. We have no way to do that.

"Mr. Patman. So indirectly you do not have sufficient force and effect to stop it?

"Mr. Crowley. Not the expansion of a holding-company system. * * *"

[p. 49] "Mr. Patman. This holding company law that Congress passed a few years ago, it did not affect the Trans-America Corporation?

"Mr. Crowley. It did not restrict them from further expansion, Congressman. There was nothing in the law that gave anyone that authority to restrict their expansion.

"Mr. Patman. Were they specifically exempt?

"Mr. Crowley. No; I mean it did not stop the growth of any bank holding company.

"Mr. Patman. You think that is a serious menace and should be dealt with by congress?

"Mr. Crowley. I do not think there is any doubt about it. * * *"

106 **Exhibit No. 28**

Filed Apr 15 1946

EXTRACTS FROM HEARINGS BEFORE SUBCOMMITTEE NO. 3 OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, 79TH CONGRESS, FIRST SESSION, ON H. R. 2357, A BILL TO AMEND SECTIONS 7 AND 11 OF THE CLAYTON ACT.

[Page references are to office printed record of transcripts.]

From testimony of Ronald Ransom, Vice-Chairman, Board of Governors, Federal Reserve System, on September 20, 1945.

[p. 336] "Mr. Ransom. I am Vice Chairman of the Board of Governors of the Federal Reserve System.

"The Board has wholeheartedly endorsed the proposal for amendment of the Clayton Act that is now before this committee. They feel that the amendments are of paramount importance and, in connection with these proposed amendments, the Board has helped to add, with the help of the Federal Trade Commission, some additional proposals that concern the field of banking, which we think is of vital importance in the whole matter.

"In order to conserve your time as much as I can, I would like to ask you to let Mr. Townsend, counsel to the Board, report very briefly the purpose behind those proposals.

"Mr. Walter. Thank you very much."

EXTRACTS FROM THE TESTIMONY WHICH MR. J. LEONARD TOWNSEND, COUNSEL, BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM, THEN GAVE FOLLOW:

[p. 337] "Briefly, may it please the members of the committee, the position of the Board is this:

"Under the Clayton Act as it now stands, not only does the Federal Trade Commission assume jurisdiction over a vast domain of companies, but so do a number of other agencies, the Interstate Commerce Commission, the Federal Communications Commission, the Civil Aeronautics Authority, and the Federal Reserve Board.

"Now, since the passage of the Clayton Act all of the other agencies mentioned by me have had their individual acts or powers extended to include the fundamental philosophy of the Federal Trade Commission bill, to wit, to enable those agencies within their respective jurisdictions to see to it that in any merger, combination, purchase, and so forth, of competing organizations, the full concept of the public interest as is indicated in the Clayton Act shall be given consideration.

107

"And so it comes to this:

"All of the agencies except the Federal Trade Commission and the Federal Reserve Board have the authority to-

day to prevent the things that the Federal Trade Commission bill would now give to it.

"I may say to this committee that the Federal Trade Commission has been both courteous, considerate, and extremely helpful in assisting us in coordinating our point of view with that of the bill. In fact, I am indebted to Mr. Kelley, their chief counsel, for the actual draft of the provisions that you now find in your committee print, and I may say further that the Federal Trade Commission itself has received our suggestions and has seen fit, fortunately, formally to approve them.

"And so, without more, we have a direct precedent for being included in the bill. All that I need now, therefore, to do, is to say that we do want to be in it, and to show you in just a few sentences the need for our being given the same general jurisdiction. * * *"

[p. 340] "Mr. Walter. Could you in a few minutes tell us about the situation in California?

"Mr. Townsend. Well, let me put it this way, Mr. Chairman:

"After a full consideration of this matter at the Federal Reserve Board it was contemplated to say to the committee that perhaps it would be inconsistent with our position right along in this matter, unless we are positively commanded to do so by the committee, to air any particular situations."

* * * * * * * * * * *

108. **Affidavit of A. L. Elliott Ponsford**

Filed Apr 15 1946

STATE OF CALIFORNIA,
City and County of San Francisco, ss.:

A. L. ELLIOTT PONSFORD, being duly sworn, on oath states:

I am a Director and Secretary and Assistant Treasurer of Transamerica Corporation and have held the offices of Secretary and Assistant Treasurer for more than four years last past; that Transamerica Corporation is a hold-

ing company affiliate of a number of banks which are members of the Federal Reserve System and that prior to July 31, 1937 it was a holding company affiliate of Bank of America National Trust and Savings Association; that the corporation holds a general voting permit issued April 28, 1937 to vote its stock in Bank of America National Trust and Savings Association, First National Bank in Reno, Nevada (now the First National Bank of Nevada), and The First National Bank of Portland, Oregon; that on account of its relations as such holding company affiliate of member banks it is subject to the supervisory powers vested by law in the Board of Governors of the Federal Reserve System.

My duties as a Director and officer of Transamerica Corporation are such as to require me to keep abreast of the administration of the law with respect to the rights, privileges and obligations of holding company affiliates
109 of banks, and particularly its administration by the Board of Governors of the Federal Reserve System and in that connection to observe the official announcements of the Board of Governors of the Federal Reserve System as the same appear from time to time in the "FEDERAL RESERVE BULLETIN", the official publication of said Board. This publication is issued monthly and the information referred to herein is contained in various issues over the past several years under the topic "Current Events." This source of information discloses that since or concurrently with the admission of Peoples Bank to membership in the Federal Reserve System subject to the purported Condition No. 4, five state banks—two in Montana and three in Minnesota—have been admitted to membership in the Federal Reserve System, which banks are affiliated with the Northwest Bancorporation, a holding company affiliate. The said banks are the following:

Hill County State Bank of Havre, Montana (admitted between the period April 16, 1943 and May 15, 1943)

First State Bank of Malta, Montana (admitted between the period April 16, 1945 and May 15, 1945)

State Bank of Northfield, Minnesota (admitted between the period April 16, 1942 and May 15, 1942)

Austin State Bank, Austin, Minnesota (admitted between the period April 16, 1942 and May 15, 1942)

State Bank of Virginia, Minnesota (admitted between the period May 16, 1942 and June 15, 1942)

The said source of information also discloses that since the admission of Peoples Bank to the Reserve System there have been admitted to such System the following California banks during the periods indicated:

Napa Bank of Commerce, Napa, California (admitted between the period October 16, 1943 and November 15, 1943)

Bank of Berkeley, Berkeley, California (admitted between the period January 16, 1945 and February 15, 1945)

Bank of Beaumont, Beaumont, California (admitted between the period August 16, 1945 and September 15, 1945)

Security Trust & Savings Bank of San Diego, San Diego, California (admitted between the period November 16, 1945 and December 15, 1945)

The records of the Board of Governors of the Federal Reserve System with reference to the conditions of membership of state banks, according to my understanding, are regarded as confidential records between each of the banks and the Reserve System and are not available for my inspection. However, on the basis of reliable information I have reason to believe that with regard to Napa Bank of Commerce, the first bank in California admitted after the admission of Peoples Bank to the Reserve System, no such condition as Condition No. 4 was imposed or exacted of such bank. It is a matter of common knowledge that said bank has recently been absorbed by the American Trust Company of San Francisco, a state member bank, and that said Trust Company has been authorized by the Board of Gov-

ernors of the Federal Reserve System to operate a branch at the location of said bank.

A. L. ELLIOTT PONSFORD.

Subscribed and sworn to before me
this 6th day of April, 1946.

JOHN A. BURNS,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires April 12, 1949.

* * * * * * * * * * *

111 **Affidavit of Laban H. Brewer**

Filed Apr 15 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

LABAN H. BREWER, being duly sworn, deposes and says:

I reside at 1245 East 3rd Street, Long Beach, California, and have at all times since November 23, 1943 been a Director and President of Peoples Bank, Lakewood Village, California, the plaintiff in this action. During that entire period I have been aware of the conditions prescribed by the Board of Governors of the Federal Reserve System, to which the membership of said Bank in the Reserve System purports to be subject, among which is Condition No. 4, purporting to require withdrawal from the Reserve System in certain circumstances.

The said Bank was admitted as a member of the Federal Reserve System on May 15, 1942. By virtue of such admission it has at all times been an insured bank with its deposits insured by the Federal Deposit Insurance Corporation to the extent provided by Section 12(b) of the Federal Reserve Act, as amended, and has, at all times, been required to advertise itself as an insured bank pursuant

to the laws and regulations appertaining thereto.

112 By reason of the extraordinary efforts of the Bank to provide banking service for the community in which it is located, and by reason of the rapid development of such community, the deposits in said Bank have increased to a point where it has become necessary for the Bank's Board of Directors to give consideration to the desirability and possibility of increasing the Bank's capital. In the discussions relating to this subject the fact that Condition No. 4 still exists, as originally prescribed, was regarded as a serious deterrent to the investment of additional capital funds in the stock of such Bank, and it is my opinion that there is every reason to believe that the said Condition No. 4, if continued, may well preclude increasing the Bank's capital stock.

I was present at a meeting of the Board of Directors of said Bank held on the 24th day of March, 1944, which was called for the purpose of ascertaining the full legal effect of the said Condition No. 4 upon said Bank. At such meeting, the said Board of Directors was advised, for the first time, that termination of membership in the Federal Reserve System would entail, as an inevitable and necessary legal consequence thereof, the termination of the Bank's status as an insured Bank. The Board of Directors was also then advised, for the first time, that before said Bank was admitted to membership in the Federal Reserve System, subject to Condition No. 4, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation had actually entered into an agreement which would prevent the said Peoples Bank from remaining an insured bank in the event of a termination of said Bank's membership in the Federal Reserve System through the operation of said Condition No. 4.

Upon numerous occasions I have observed the awareness of the public, and particularly the patrons of the Bank with whom I am in contact from day to day, of the fact of deposit insurance, and I know that numerous of the Bank's depositors have been, and are, at all times conscious of the

Bank's position as a member bank and as an insured bank. From time to time, as information concerning the Bank's litigation to eliminate Condition No. 4 has been pub-
114 lished in the newspapers and discussed in the community, the Bank's membership in the Federal Reserve System has become a matter of public discussion, and to allay the concern of depositors resulting from such discussions, affiant and other directors and officers of the Peoples Bank have found it necessary to explain the character of this membership as such membership is affected by Condition No. 4, and they have consistently informed depositors that the Bank had been advised by counsel that such condition was illegal and void and could not be enforced.

In the ordinary course of the development of the Peoples Bank's business I find it to be increasingly necessary to make commitments for longer periods of time in the future affecting such matters as lines of credit, investments, personnel, banking premises, facilities and the like. The threat to the existence of Peoples Bank which is posed by Condition No. 4 and the agreement between the defendants and the Federal Deposit Insurance Corporation that the plaintiff will be permanently deprived of Federal deposit insurance in the event Condition No. 4 is formally invoked are a constant source of embarrassment and a detriment to the ability of Peoples Bank and its officers and Board of Directors to conduct it on a basis of normal development in free and equal competition with other similar institutions.

LABAN H. BREWER.

Subscribed and sworn to before me
this 4th day of April, 1946.

PAUL MILLETTE O'NEILL,
Notary Public in and for the County of Los Angeles, State of Califoria.
My Commission Expires Dec. 25, 1949.
(SEAL)

114 Filed Apr 15 1946

Affidavit of Michael G. Luddy

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA,
County of Los Angeles, ss.:

MICHAEL G. LUDDY being first duly sworn on oath states:

I am an attorney and counsellor at law, practicing my profession at 453 South Spring Street, in the City of Los Angeles, California; I have long had an interest in various banks and am now a director of Peoples Bank of Lakewood Village, Lakewood Village, California, and of Oilfields National Bank at Brea, Brea, California, and of First National Bank of Glendale, Glendale, California.

On the 21st day of December, 1943, I purchased 200 shares of the capital stock of Peoples Bank, situated in Lakewood Village, California, knowing that such bank was a comparatively new bank, a member of the Federal Re-
115 serve system, and situated in a new and thriving community. At the time of the purchase of said shares I was not aware of any extraordinary circumstances relating to said bank's membership in the Reserve System and made my investment therein believing that the said bank would have the right to avail itself of all provisions of law under which its business would grow and enable me to derive profit from my investment. Thereafter I became aware of the existence of condition number 4, to which that bank's membership in the Reserve System was subject, and I thereupon determined to take all possible measures to protect the said bank and my investment therein from the adverse effect of such provision. As a shareholder and director of said bank I know that my investment therein is impaired and that the bank is under constant and perpetual embarrassment in the development and transaction of its business by reason of the said condition. In my judgment the constructive plans of the bank to obtain additional

capital funds cannot be pursued until the said condition is judicially determined to be void and of no effect.

MICHAEL G. LUDDY.

Subscribed and sworn to before me, the undersigned G. Stuart Silliman, a Notary Public in and for the County of Los Angeles, State of California, this 2nd day of February, 1946.

G. STUART SILLIMAN.

My commission expires Aug. 9, 1947.

(SEAL)

(N.Y.)

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

I, J. F. MORONEY, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, which Court is a Court of Record, having a seal, do hereby certify that G. Stuart Silliman whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgement, proof or affidavit, a Notary Public in and for Los Angeles County, duly commissioned and sworn and residing in said County, and was, as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given to his official acts; that the impression of his official seal is not required by law to be filed in the office of the County Clerk; I further certify that I am well acquainted with his handwriting and verily believe that the signature to the attached certificate is his

genuine signature, and further that the annexed instrument is executed and acknowledged according to the laws of the State of California.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Superior Court this 2nd day of February, 1946.

J. F. MORONEY,
County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

(SEAL)

By CLAUDE JACOBY, *Deputy.*

Corp. Form No. 9

* * * * * * * * * * *

116 Filed Apr 18 1946

Stipulation

WHEREAS there is now pending before this Court and set for oral argument on April 29, 1946, defendants' Motion for Judgment on the Pleadings herein; and

WHEREAS plaintiff on April 15, 1946 filed its Motion for Summary Judgment, together with affidavits in support thereof;

NOW, THEREFORE, IT IS HEREBY STIPULATED, by and between the parties hereto, subject to the approval of the Court:

(1) That plaintiff's Motion for Summary Judgment may be set down for oral argument on April 29, 1946.

(2) That in deciding defendants' Motion for Judgment on the Pleadings the Court may consider all relevant and admissible facts contained in the affidavits submitted by plaintiff in support of its Motion for Summary Judgment.

(3) That upon the hearing on these motions, counsel for defendants shall have the opening and closing arguments.

(4) That the parties may file briefs with the Court

117 within one week following the close of the oral argument.

BLAKE, VOORHEES & STEWART,
20 Exchange Place,
New York, New York,

SANNER, FLEMING & IRWIN,
5658 Wilshire Boulevard,
Los Angeles, California,

Messrs. FULTON, WALTER & HALLEY,
Occidental Hotel Building,
1421 Pennsylvania Avenue,
Washington, D. C.
By MARSHALL HORNBLOWER,
Counsel for Plaintiff.

EDWARD M. CURRAN,
United States Attorney, District of Columbia, Court House, Washington, D. C.

GEORGE B. VEST,
J. LEONARD TOWNSEND,
Board of Governors of the Federal Reserve System, Washington, D. C.
Counsel for Defendants.

Approved: April 18th, 1946.

JENNINGS BAILEY,
Justice.

Opinion of Justice Bailey

118 Filed Jun 3 1946

This case is before the Court on defendants' motion for judgment on the pleadings and plaintiff's motion for summary judgment, both motions having been orally argued on April 29th, last.

The complaint shows that plaintiff is a banking corporation organized under the laws of the State of California; that defendants are the individual members of the Board of Governors of the Federal Reserve System; that in 1941 plaintiff applied for membership in the Federal Reserve System; that in May 1942 it was admitted to the Federal Reserve System membership upon the following conditions, among others:

"4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary thereof, acquires, directly or indirectly, through the mechanism of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System."

The complaint further shows that, since plaintiff's admission to the Federal Reserve System membership, a number of its shares have been acquired by, and registered on its books in the name of Transamerica Corporation, and that these shares were acquired by Transamerica without plaintiff's knowledge or consent, and without the approval of the Board of Governors.

119 Upon the basis of these facts plaintiff seeks a declaratory judgment that Condition No. 4 is invalid

and an injunction restraining defendants from taking any steps to enforce the Condition.

The defendants have filed a joint and several answer, in which they set forth two defenses. The first defense is that plaintiff, having enjoyed for almost four years the benefits of the Federal Reserve System membership, which resulted from its acceptance of Condition No. 4, is now estopped from challenging the validity of such Condition. The second defense is that the complaint otherwise fails to state facts upon which any relief can be granted.

It appears that plaintiff filed its formal application for admission to the Federal Reserve System under date of December 2, 1941; that on February 14, 1942, the Board of Governors rejected the application; that after a conference with the Board, representatives in Washington, attended by its representatives, plaintiff by letter formally requested the Board of Governors to reconsider its decision, calling attention to the fact that a number of changes had taken place in its stock ownership; that, following the receipt of plaintiff's formal request for reconsideration, the Board of Governors, under date of March 11, 1942, notified plaintiff that its application would be reconsidered if the plaintiff could demonstrate inter alia:

* * *

"2. That some change has been made in the arrangements for the use of the furniture and fixtures whereby the bank will be under no obligation to Capital Company or any other part of the Transamerica group.

"3. That neither Transamerica Corporation nor any organization affiliated or closely identified with Transamerica Corporation or any other bank holding company group has any interest, direct or indirect, in the applicant bank, and that the bank is in no manner obligated to any such organization.

"4. That all stockholders have stated in writing that they have no agreements or understandings, expressed or implied, with respect to the sale or transfer of the stock of

the bank to any such organization, and that they do not intend to enter into any such agreements or understandings.

"5. That the bank was organized as a bona fide local, independent institution, and is expected to be continued as such."

Plaintiff, as a means of securing the Board of Governors reconsideration of its application, voluntarily complied with all of these requirements. Under date of April 23, 1942, plaintiff sent to the Federal Reserve Bank of San Francisco (1) a statement relative to the refinancing of its shares of plaintiff's stock, (2) a declaration signed by all of plaintiff's directors that plaintiff was "organized as a bona fide local, independent institution," and that it was not obligated in any manner to Transamerica Corporation or to any of its affiliated companies, and (3) a signed statement of each stockholder that he had no arrangements respecting the sale or transfer of his shares to Transamerica or any of its affiliated companies and that he did not intend to enter into any such arrangements in the future.

Based upon the representations thus made to it by the bank and by all of its directors and stockholders, the Board of Governors, under date of May 6, 1942, notified the plaintiff that its application had been approved subject to a number of conditions, including Condition No. 4. Before membership status could attach, however, plaintiff was required to evidence its acceptance of the conditions by formal resolution, a certified copy of which was to be filed with the Federal Reserve Bank of San Francisco.

The plaintiff contends that the Board was without power to impose this Condition No. 4 and therefore it is a nullity and should be cancelled. In my opinion, however, the plaintiff is not in a position to raise this question. It voluntarily agreed to it and on the basis of that agreement was admitted to membership in the Federal Reserve System, and for several years has received the benefits of membership in that System. It is true that there are many cases in which the Supreme Court has held that a state cannot im-

pose conditions upon the doing of business by foreign corporations which are in violation of rights secured by
121 the Federal Constitution, and in the case of *United States* v. *Chicago M. St. P. & Pac. RR. Co.*, 282 U. S. 311, it held that a corporation was not estopped by a condition imposed by the Interstate Commerce Commission which was beyond the power of the Federal Government to impose. The case of *Hammer* v. *Dagenhart*, et al., 247 U. S. 251 had not then been overruled and was relied on by the majority of the court in holding that the Interstate Commerce Commission nor Congress itself may take any action which lies outside the realm of interstate commerce. On the other hand, in cases such as *Pierce Oil Corporation* v. *Phoenix Refining Co.*, 259 U. S. 125; *St. Louis Malleable Casting Co.* v. *Prendergast Construction Co.*, 260 U. S. 469, and *Hurley* v. *Commission of Fisheries*, 257 U. S. 223, it has been held that where one accepts a privilege it consents to be bound by the conditions attached to it and it will not be heard to attack its legality. And in those cases, where a foreign corporation undertakes to do intrastate business within a state, as distinguished from business arising out of interstate commerce, the tendency has been to sustain the conditions imposed by a state, *United Fuel Gas Co.* v. *Railroad Commission*, 278 U. S. 300. So, too, in the case of *United States* v. *Chicago etc. R. R. Co.*, supra, at p. 342, Mr. Justice Stone dissenting said:

"Courts may determine whether the Commission lacks the power to impose a particular condition; but they may not strike from an order the condition upon which it was granted, and thus declare that it should stand although the condition is not complied with."

The condition here is clearly not one outside the domain of the Federal Government. Here the defendant Board, with discretionary power to admit or to refuse to admit the plaintiff to the privilege of membership in the Federal Reserve System, imposed a condition which was not merely acquiesced in but agreed to by the plaintiff. The claim that this agreement was brought about by duress of the

plaintiff is, I think, without foundation. The agreement was voluntarily made, it was acted on and the plaintiff received the benefits which arose from its admission to membership in the System. I see nothing contrary to public policy in the condition agreed upon by the parties; indeed, it may well be that the condition imposed was within the Board's discretion if it was of the opinion that unsound banking policies were being pursued by Transamerica and that the character of management of this plaintiff bank, if Transamerica obtained control, would be detrimental to sound banking.

122

In any event, plaintiff cannot now attack the validity of the condition to which it voluntarily agreed and this motion of the defendants for summary judgment will be sustained.

Mr. Justice Holtzoff has held that the Court has jurisdiction of this suit and that a case is presented for a declaratory judgment. *Peoples Bank* vs. *Eccles et al.*, 64 F. Supp. 811; and denied a motion to dismiss the complaint based on the ground that no justiciable controversy was presented; but the motions for summary judgment were not before him, they having been filed since his action on the motion to dismiss.

The defendant, John K. McKee, has moved to dismiss the complaint as to him, and apart from the motions for summary judgment it will be sustained. He is no longer a member of the Board; the action is not one for damages; and he no longer has any power to take any action in the premises.

JENNINGS BAILEY,
Justice.

123 Filed Jun 6 1946

Order

The above-entitled matter came on to be heard by the Court upon the complaint, answer, defendants' motion for judgment on the pleadings, plaintiff's motion for summary judgment and supporting affidavits, and a stipulation of the parties filed herein and approved by the Court on April 18, 1946. For the reasons set forth in the opinion of this Court filed herein on June 3, 1946,

It Is Hereby Adjudged, Ordered and Decreed,

(1) That the complaint be and it is hereby dismissed as to the defendant, John K. McKee.

(2) That defendants' motion for judgment be and it is hereby granted.

(3) That plaintiff's motion for judgment be and it is hereby denied.

JENNINGS BAILEY,
Justice.

Approved as to form

FULTON, WALTER & HALLEY,
Counsel for Plaintiff.

By MARSHALL HORNBLOWER.

124 Filed Jun 14 1946

Notice of Appeal

Notice is hereby given, this 14th day of June, 1946, that Peoples Bank, Plaintiff above named, hereby appeals to the United States Court of Appeals for the District of Columbia, from the order of this Court entered on the 6th day of June, 1946, in favor of the Defendants and against said Peoples Bank, Plaintiff:

(1) Dismissing the complaint as to the Defendant, John K. McKee;

(2) Granting Defendants' motion for judgment on the pleadings:

(3) Denying Plaintiff's motion for summary judgment.

BLAKE, VOORHEES & STEWART,
20 Exchange Place,
New York 5, N. Y.

FULTON, WALTER & HALLEY,
Occidental Hotel Building,
1411 Pennsylvania Avenue,
Washington, D. C.

SANNER, FLEMING & IRWIN,
5658 Wilshire Boulevard,
Los Angeles, California,
Attorneys for Plaintiff.

To:

EDWARD M. CURRAN,
United States Attorney, District of Columbia,
Court House, Washington, D. C.

GEORGE B. VEST,
J. LEONARD TOWNSEND,
Board of Governors of the Federal Reserve System,
Washington, D. C.,
Attorneys for Defendants.

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Before Honorable HENRY W. EDGERTON, BENNETT CHAMP CLARK and WILBUR K. MILLER, Associate Justices.

* * * * *

No. 9338, October Term, 1946

PEOPLES BANK, APPELLANT

vs.

MARRINER E. ECCLES ET AL., APPELLEES

Minute entry

Nov. 27, 1947

Argument commenced by Mr. Samuel B. Stewart, Jr., attorney for appellant, continued by Mr. J. Leonard Townsend, attorney for appellees, and concluded by Mr. Samuel B. Stewart, Jr.

* * * * *

In United States Court of Appeals, District of Columbia

No. 9338

PEOPLES BANK, APPELLANT

v.

MARRINER S. ECCLES, RONALD RANSOM, M. S. SZYMCZAK, JOHN K. MCKEE, ERNEST G. DRAPER AND RUDOLPH M. EVANS, APPELLEES

Appeal from the District Court of the United States for the District of Columbia

Argued November 27, 1946—Decided April 14, 1947

Mr. Samuel B. Stewart, Jr., for appellant. Mr. Joseph William Burns also entered an appearance for appellant.

Mr. J. Leonard Townsend, Assistant General Counsel, Board of Governors of the Federal Reserve System, with whom Mr. Edward M. Curran, United States Attorney at the time the brief was filed, was on the brief, for appellees.

Before EDGERTON, CLARK, and WILBUR K. MILLER, JJ.

Opinion

Filed April 14, 1947

WILBUR K. MILLER, J.: The principal question in this case is whether a drastically restrictive condition upon a state bank's membership in the Federal Reserve System was validly imposed by the Board of Governors of the System. A secondary question is whether the state member bank is prevented by waiver or by estoppel from challenging the validity of the condition.

The Peoples Bank of Lakewood Village, California, was incorporated in 1941 under the laws of that state, after the State Superintendent of Banks had found that public convenience and advantage would be promoted by its establishment at the proposed location. A license actually to transact business would not be granted, the Superintendent advised, until deposit insurance had been obtained through membership in the Federal Deposit Insurance Corporation or in the Federal Reserve System. Accordingly, the Peoples Bank forwarded on November 28, 1941, an application for admission to the Federal Reserve System, using the printed form furnished by the System and supplying all the data thereby required.

In acting upon the application the Board of Governors considered the financial condition of the applying bank, the general character of its management, and whether the corporate powers were consistent with the purposes of the Act, as required by Title 12, § 322, U. S. C. A. In like manner the Board of Governors considered the financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and need of the community to be served by the bank, and whether its corporate powers were consistent with the purposes of the statute, as required by Title 12, § 264, subsections (e) (2) and (g). The bank, being fully qualified in those respects at the time of application, was eligible for membership in the Federal Reserve System, and the Board of Governors necessarily so found when it later permitted the institution to become a member.

But the bank was not immediately admitted. Under date of February 12, 1942, the secretary of the Board of Governors instructed the Federal Reserve Bank of San Francisco to inform the applicant that the Board "is unwilling to approve the application on the basis of the information now before it." No reason for the refusal was given, and its basis was not discovered by the Peoples Bank until late in February, 1942, when one of its directors had a personal conference in Washington with two members of the

Board and its secretary. The director's affidavit includes the following:

"During the course of my conversation with the said Board members and Secretary I recall that statements were made to the effect that Secretary Morgenthau was opposed to increasing the number of banking offices of Bank of America and that it was stated that there was considerable agitation against increasing the banking interests of bank holding companies—so much so, that there was a prospect that legislation would be introduced to curb the expansion of bank holding companies. It was also stated in substance that upon assurances that the Peoples Bank was independent of Bank of America and Transamerica Corporation the Board might be disposed to reconsider the application."

The bank asked the Board to reconsider, and furnished information concerning changes in the ownership of its shares which had occurred after the filing of its original application. By letter dated March 11, 1942, the Federal Reserve Bank of San Francisco informed the Peoples Bank "that the Board of Governors will be glad to reconsider your application upon a definite showing by the directors of your bank" that five conditions set out in the letter had been met. These conditions are shown in the margin.[1]

The bank complied with those requirements. In meeting the third requirement contained in the letter of March 11, 1942, each shareholder of the bank signed the following letter:

"I, the undersigned, being a stockholder of the Peoples Bank, Lakewood Village, California, do hereby state that I have no arrangements, expressed or implied, with respect to the sale or transfer of the stock of the Bank which I own to either the Transamerica Corporation, or any organization affiliated or closely identified with Transamerica Corporation, or any other Bank Holding Company group, and that I do not intend to enter into any such agreements or understandings."

Some weeks thereafter, on May 6, 1942, the Board approved the application for membership, subject to three conditions which it

---

[1] "1. That arrangements have been made by Mr. John S. Griffith, San Marino, California, for financing the purchase of his stock in a manner different from that in effect at the time of our investigation of your bank's application for membership, and that such arrangements are consistent with the other provisions of this letter.

"2. That some change has been made in the arrangements for the use of the furniture and fixtures whereby the bank will be under no obligation to Capital Company or any other part of the Transamerica group.

"3. That neither Transamerica Corporation nor any organization affiliated or closely identified with Transamerica Corporation or any other bank holding company group has any interest, direct or indirect, in the applicant bank, and that the bank is in no manner obligated to any such organization

"4. That all stockholders have stated in writing that they have no agreements or understandings, expressed or implied, with respect to the sale or transfer of the stock of the bank to any such organization, and that they do not intend to enter into any such agreements or understandings.

"5. That the bank was organized as a bona fide local, independent institution, and is expected to be continued as such."

clearly had the statutory right to impose, and subject to a fourth condition which, sharply challenged, is the storm center of this litigation. The first three conditions, standard in character and usually imposed on State banks applying for membership, are shown in the margin.[2] Condition No. 4, which the appellant says not only is not standard, having never been imposed before or since, but invalid as well, is as follows:

"4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary thereof, acquires, directly or indirectly, through the mechanism of extension of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank other than such as may arise out of usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System."

Since the conditions in the commitment of May 6, 1942, were substantially those contained in the San Francisco Reserve Bank's letter of March 11, 1942, already met, no additional action by the appellant bank was necessary specifically to meet the formal conditions in the communication of May 6, 1942. Having been in other respects ready for many months to function as a banking institution, the Peoples Bank opened its doors and began business activity soon after it became a member of the System pursuant to the commitment.

In 1944, the proscribed Transamerica Corporation, without the knowledge or assistance of the bank, acquired 540 shares of its capital stock, being slightly more than 10 percent of the total of the 5,000 shares authorized, issued and outstanding. The bank immediately reported that fact to the Board and asked to be relieved of Condition No. 4 which, in view of Transamerica's acquisition of stock, made it possible for the Board immediately to demand that the bank withdraw from the System. As withdrawal

---

[2] "1. Such bank at all times shall conduct its business and exercise its powers with due regard to the safety of its deposits, and, except with the permission of the Board of Governors of the Federal Reserve System, such bank shall not cause or permit any change to be made in the general character of its business or in the scope of the corporate powers exercised by it at the time of admission to membership.

"2. The net capital and surplus funds of such bank shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, and its capital shall not be reduced except with the permission of the Board of Governors of the Federal Reserve System.

"3. Such bank shall not engage as a business in issuing or selling either directly or indirectly (through affiliated corporations or otherwise) notes, bonds, mortgages, certificates, or other evidences of indebtedness representing real estate loans or participations therein, either with or without a guarantee, indorsement, or other obligation of such bank or an affiliated corporation."

would result in automatic cancellation of deposit insurance, the bank regarded the literal enforcement of Condition No. 4 as a death sentence.

When the Board refused to revoke the provision, the Peoples Bank sued its members in the District Court of the United States for the District of Columbia to have the condition adjudged invalid, and to enjoin its enforcement.

The Board members moved to dismiss the complaint on the ground that it presented no justiciable controversy. After that motion had been denied,[3] an answer was filed pleading that the complaint showed on its face (a) that the bank was estopped to deny the validity of Condition No. 4, (b) that in imposing Condition No. 4 the Board exercised the administrative discretion confided to it by § 9 of the Federal Reserve Act,[4] and (c) the validity of Condition No. 4. With this answer in the record, the Board members moved for judgment on the pleadings. The bank countered with a motion for summary judgment and filed in support numerous affidavits and exhibits in which the factual background of the controversy is shown.

Upon consideration of the several motions, the District Court's opinion was that the bank "cannot now attack the validity of the condition to which it voluntarily agreed." Being of that view, the court entered judgment for the Board members, on the pleadings, and denied the bank's motion for summary judgment. The Peoples Bank appeals.

We first consider the question whether the Board of Governors had the power to attach Condition No. 4 to the membership of the Peoples Bank in the Federal Reserve System.

Under the literal language of the condition, the Board's right to expel the bank becomes absolute the moment Transamerica acquires a stock interest, without a previous finding that Transamerica's acquisition of shares would, or probably would, adversely affect the bank. Nor is the effectiveness of the Board's power to expel under Condition No. 4 made to depend upon the acquisition by Transamerica of a controlling interest in the bank. The ownership by that corporation of any number of shares, however small, sets the condition in motion and gives rise to the power of expulsion.

This striking denunciation of Transamerica makes pertinent an inquiry into the nature of that organization. The record discloses it to be a large corporation, owning extensive interests in many banks and in other corporations as well. It is a substantial stockholder in the Bank of America, which for several years has

---

[3] Peoples *Bank* v. *Eccles*, 64 F. Supp. 811.
[4] 12 U. S. C. A., § 321.

been one of the two or three largest banks in the Nation. The financial soundness of Transamerica is not challenged. The character, integrity and ability of its management are not assailed. No statute, state or federal, forbids it to own shares of the Peoples Bank or any other bank.

The basis for the imposition of this unusual and unqualified prohibition against Transamerica's acquiring shares of the bank in question is shown by the record to be the fact that for some time federal bank regulatory authorities, including the Board, have regarded further expansion of Transamerica as undesirable and unsound. Moreover, we are so advised by the following statement in the appellees' brief:

"In this case the record shows that the Board had reason to believe that appellant, at the time it applied for membership in the System, was under or was about to come under the management of Transamerica Corporation, the bank expansion program of which the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation all believed to be unsound. Condition No. 4 was therefore designed to prevent that corporation from taking over appellant's affairs after it came into the System."

The fact is, however, that the record does not show that the Board had reason to believe that appellant, at the time its application was filed, was under or was about to come under the management of Transamerica. The purpose of Condition No. 4, therefore, was primarily to check the growth of Transamerica, which the Board considered to be already too large.

Whether the Board of Governors has the power, in the effort to implement its theory that the enlargement of bank holding companies should be forbidden, to deny to Transamerica its right, otherwise entirely legal, to purchase and own shares in the Peoples Bank, depends on whether the Federal Reserve Act expressly or impliedly confers such authority. In other words, the validity of Condition No. 4 as a curb to the growth of a bank holding company depends upon whether the Congress intended to authorize the Board to arrest the extension of such companies.

If such a legislative intent does not appear, grave doubt arises as to the right of the Board to form such an intent for itself. Furthermore, if a contrary intent on the part of Congress be found, unquestionably the Board's assumption of the power to check the expansion of bank holding companies amounts to an invasion of the legislative field. All the Board's power springs from the statute. An administrative agency may have a wide latitude within which to function, and may be authorized to prescribe regulations which must be observed by those subject to its jurisdiction. But

its regulations must fall within the limits of the authorizing statute, and must be such as will carry into effect the will of Congress.[5] The broad discretion confided to the Board of Governors continues only so long as it acts within its statutory scope. When the Board reaches the border of the Federal Reserve Act it must stop, for to go beyond would be to impinge on Congressional prerogatives.

We turn to the Federal Reserve Act to see whether it manifests an intent on the part of Congress to forbid bank holding companies to expand, either by prohibiting them from owning minority stock interests in state member banks, or by the use of any other device. We find no such prohibition. The Act goes no further, with respect to limiting the activity of a holding company, than to provide that one which owns a majority of the shares of a member bank may not vote such shares without first obtaining a permit from the Board of Governors. The Congress has thus expressly conferred upon the Board the right to supervise and curb a holding company when, through the ownership of a controlling interest, it is in a position to dominate a bank's management and to dictate its policy. It was not deemed necessary to give the Board the right to prevent or restrict voting by a holding company having less than a majority interest, as no such provision appears in the statute. Obviously the legislators did not share the Board's apprehension that harm might come to a member bank from the votes of a holding company having less than control.

This limited statutory restriction upon bank holding companies, which contrasts strikingly with the broad restraint imposed by the Board in the present case, has added significance when considered in the light of certain legislative history of the Federal Reserve Act. From that history it is learned that the Congress, quite deliberately and because of what it considered an abuse of a power which it had theretofore granted to the Board in broad general terms, provided that the Board of Governors may only impose such conditions upon a bank's admission to the System as are within and pursuant to the legislative intent in adopting the Act.

---

[5] Manhattan General Equipment Co. v. Commissioner of Internal Revenue, 297 U. S. 129, 134, where the Supreme Court said:

"The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law—for no such power can be delegated by Congress—but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity. Lynch v. Tilden Produce Co., 265 U. S. 315, 320–322; Miller v. United States, 294 U. S. 435, 439–440, and cases cited. And not only must a regulation, in order to be valid, be consistent with the statute, but it must be reasonable. International Ry. Co. v. Davidson, 257 U. S. 506, 514."

Prior to 1927, the governing body of the Federal Reserve System had the very broadest power to attach conditions to a bank's entry into the System. The statutory language[6] on the subject was:

"The Federal Reserve Board, subject to such conditions as it may prescribe, may permit the applying bank to become a stockholder."

At a hearing before a subcommittee of the Senate Committee on Banking and Currency in February 1926, Senator Carter Glass stated that the Federal Reserve Board (predecessors of appellees here) "has usurped the legislative functions of Congress." An amendment to restrict the power of the Board to impose conditions upon membership was being considered. Senator George Wharton Pepper, of Pennsylvania, who favored such an amendment, said in the Senate on February 23, 1925:

"* * * the committee thinks that the discretion of the Federal Reserve Board in the premises should be a discretion exercised pursuant to the provisions and conditions of the act; that is, that there was no intent of Congress, when the Federal Reserve Act was passed, to create in the Federal Reserve Board a body to prescribe any kind of conditions it pleased as conditions precedent to admissibility to the Federal Reserve System, but rather to confer upon the Federal Reserve Board authority to make regulations pursuant to the Act fixing the terms upon which banks might become members of the Federal Reserve System."

The Board of Governors desired to retain the right to impose any conditions it chose upon membership and expressed its unqualified disapproval of the amendment proposed. Nevertheless, in 1927 the Congress amended the provision to read as follows:

"The Board of Governors of the Federal Reserve System, subject to the provisions of this title and to such conditions as it may prescribe pursuant thereto, may permit the applying bank to become a stockholder of such Federal Reserve Bank."[7]

Moreover, the Board of Governors has expressly recognized that it has no statutory power to prevent the expansion of bank holding companies. An example of this recognition is found in the testimony of the appellee, Marriner S. Eccles, chairman of the Board of Governors, before the Committee on Banking and Currency of the House of Representatives on April 5, 1943. He said that he had given considerable thought to the operation and development of Transamerica and that he did not look upon it as a wholesome undertaking. He stated his opinion to be that Transamerica,

---

[6] 40 Stat. 233, Public Law 25, 65th Congress, approved June 21, 1917.
[7] 44 Stat. 1229, 12 U. S. C. A. 321.

in its purchase of the stock of banks and of the stock of corporations having nothing to do with banks, was pursuing an improper and unsound policy. He added, however, that the Board did not have, and had never sought from Congress, any power or authority to deal with that situation.

In his appearance before the same committee on May 10, 1943, Eccles was asked by Congressman Patman: "* * * unless you can get better cooperation out of Transamerica you would look with favor upon advocating legislation that would curb the bank holding companies?" He replied, "That would give the Board the power to require what they would consider a policy in the public interest." That answer constituted an admission of the Board's lack of power to curb holding companies, although its members considered that such curbing would be in the public interest.

Further recognition by the Board of its lack of the authority which it attempted to exercise by the imposition of Condition No. 4 appears in its annual report for the year 1943. After saying "there is now no effective control over the expansion of bank holding companies or in any other field in which they may choose to expand," the Board of Governors recommended to Congress "that immediate legislation be enacted preventing further expansion of existing bank holding companies or the creation of new bank holding companies." That recommendation has not been followed and no such legislation has been enacted by the Congress.

So there is no statutory bar to the expansion of bank holding companies such as Transamerica. No Congressional enactment forbids Transamerica or any similar corporation to acquire and own any number of shares of the Peoples Bank or any member or non-member bank. Although the Board has requested Congress to authorize it to prevent the further growth of Transamerica and like organizations, Congress has withheld that authority. Its failure to enact the restrictive legislation strongly recommended by the Board of Governors shows a legislative intent that acquisition of bank shares by holding companies shall not be unlawful.

But nevertheless Condition No. 4 imposed by the Board of Governors in this case singles out one holding company and prohibits it from owning any shares of the member bank, however few in number. As has been shown, the avowed purpose was to prevent further expansion of Transamerica, in the face of the fact that the Board has expressly recognized its lack of power in that respect and has unsuccessfully sought to obtain such power from the Congress. Inevitably, it follows that if the Board's sole purpose here was to prevent the enlargement of Transamerica, the

condition imposed was not expressive of, but contrary to, a plainly evident legislative intent. If that were its sole purpose, Condition No. 4 is invalid.

We find, however, that the Board members take the position that their purpose in imposing the condition was not only to check the extension of Transamerica, but also to protect the bank by preventing Transamerica from taking over its affairs. The appellees state in their brief, as we have heretofore shown, that "Condition No. 4 was therefore designed to prevent that corporation (Transamerica) from taking over appellant's affairs after it came into the System." The appellees' brief then adds, "Thus the Condition is directly related to 'management' and 'financial condition,' two of the subjects which the Board is specifically required to consider in passing upon membership applications. Under such circumstances the Condition has even that direct statutory sanction which appellant's argument would require." In this connection, it is noted from the record that on January 28, 1946, the Board of Governors adopted the following resolution:

"Upon consideration of the latest report of examination of the Peoples Bank, Lakewood Village, California, from which the Board concluded that there had been no substantial change in the control, management or policy of the bank resulting from the acquisition by Transamerica Corporation of certain shares of the bank's stock, the Board, by unanimous vote, decided that there was no present need in the public interest for any action by the Board with respect to the condition of membership of the bank relating to acquisition of its stock by Transamerica Corporation."

The quoted resolution, in our view, administratively interprets Condition No. 4 as meaning that, if the Board should decide that a substantial change, against the public interest, has occurred in the bank's management, control or policy because of Transamerica's stock ownership, it must withdraw from the System after notice to do so. For obvious reasons, the Board could properly reach such a decision only after a full and fair hearing.

It is, of course, apparent that the resolution of January 28, 1946, adopted nearly two years after Transamerica acquired its shares and after the bank had during the same period unsuccessfully sought relief from the harsh condition, was primarily intended as an aid to the appellees' motion to dismiss the complaint. It was adopted soon after the suit was filed and was attached to the motion to dismiss. As indicative of the absence of a justiciable controversy, the resolution was not convincing to Mr. Justice Holtzoff, of the District Court, whose opinion[8] points out that the sword

[8] Peoples Bank v. Eccles, 64 F. Supp. 811.

of Damocles is still suspended over the bank with the Board claiming the right at any time to cut the thread. Indeed, the appellees state in their brief that action under the condition is "now justified by the facts."

In regarding the resolution as an administrative interpretation of the condition, we are supported by the appellees who state in their brief:

"Condition No. 4, however, is not self-executing, as appears on its face. And the Board, in affixing the Condition in the light of the opinion which it then entertained as to the potential danger of Transamerica affiliation, did not by so acting declare in advance what its administrative decision might be if and when Transamerica should acquire some of appellant's shares. In affixing the Condition—by agreement with appellant—the Board intended to leave to future determination what action, if any, might be necessary pursuant thereto. Considerations of the public interest demanded that the Condition be imposed; the same considerations will determine when, if ever, the Condition need be enforced."

With the controversial Condition No. 4 thus properly evaluated by the Board itself, it is at once seen that the condition means no more, and gives the Board no greater authority, than standard Condition No. 1, which is that "subject bank at all times shall conduct its business and exercise its powers with due regard to the safety of its depositors, * * *." That is to say, if at any time a member bank shall appear to the Board of Governors to be pursuing unsound or unsafe bank policies, the Board may require it, after hearing, to withdraw from the System. Title 12, U. S. C. A., § 327, expressly provides that if a member bank has failed to comply with the provisions of certain sections of the Federal Reserve Act, or the regulations of the Board of Governors made pursuant thereto, or has ceased to exercise banking functions without a receiver or liquidating agent having been appointed, the Board shall have power, after hearing, to require the bank to surrender its stock in the Federal Reserve Bank and to forfeit all rights and privileges of membership.

If Condition No. 4 were given a literal interpretation, instead of the rational construction placed on it by the resolution of January 28, 1946, it would clothe the Board with arbitrary power to expel the bank without a hearing upon the happening of a contingency which had not adversely affected in any manner either the bank's position or the safety of its depositors. So construed, the condition is not authorized by the Act.

With respect to the meaning of Condition No. 4 and the method by which the Board could invoke it, the appellees, having made the

concession heretofore quoted from their brief, make yet another which seems to us to be of extreme importance:

"Even should appellant, if and when it receives such notice, take no action pursuant thereto, its membership could not be summarily forfeited. Section 9 of the Act (46 Stat. 250, 251, c. 207, U. S. C., Title 12, § 327) provides that, while the Board may order such a forfeiture, it can only do so 'after hearing' and a finding that appellant 'has failed to comply with the provisions of * * * [the law] or the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto. * * *' Appellant's alleged danger is thus rendered even more remote."

Nothing in the condition itself requires the restrained interpretation of it contained in the appellees' language just quoted. The condition does not in so many words compel the construction placed upon it by the resolution of January 28, 1946, nor does it afford a hearing to the bank which the appellees now admit should be accorded. The appellant's alleged danger, which the appellees say "is thus rendered even more remote," was not remote as long as the unqualified denunciation of Transamerica was insisted upon by the appellees, and was regarded by them as a part of the bank's contractual obligations.

We have heretofore stated our conclusion to be that Condition No. 4, as a mere device to check the growth of a holding company, finds no foundation in the statute. We hold that it has validity only as a statement that, if the Board of Governors should determine, after hearing, that Transamerica's ownership of the bank's shares has resulted in a change for the worse in the character of the bank's personnel, in its banking policies, in the safety of its deposits or in any other substantial way, it may require the bank to withdraw from the Federal Reserve System. Only in that sense can the condition be regarded as having been imposed pursuant to the Act. It is assumed that the Board would not resort to the drastic penalty of expulsion until it had exhausted the other disciplinary and corrective processes prescribed by the Federal Reserve Act.[9]

We turn now to the argument of the appellees that by accepting and enjoying membership with Condition No. 4 attached, the bank is estopped to question its validity or has waived invalidity or the right to assert it. Appellees' position is not sustained by the Supreme Court cases cited by them.[10] Those cases dealt with situations in which litigants were attacking the constitutionality of statutes or orders under which they had accepted privileges.

---

[9] Title 12, U. S. C. A. §§ 264 (l) (1) (2), 301 and 77.

[10] Pierce Oil Corporation v. Phoenix Refining Co., 259 U. S. 125; United Fuel Gas Co. v. Railroad Commission, 278 U. S. 300; St. Louis Malleable Casting Co. v. Prendergast Construction Co., 260 U. S. 469; Hurley v. Commission of Fisheries, 257 U. S. 223.

Their remaining authority, *White Star Bus Line* v. *People of Puerto Rico*, 75 F. (2d) 889, was a case in which the bus company had accepted and operated under a franchise containing a proviso for annual payment of royalties to the island government. Later the bus line questioned the authority of the Public Service Commission to condition the franchise upon the payment of royalties. The Circuit Court of Appeals did not go so far as to hold that estoppel had arisen, but was content to say "It is doubtful whether the bus line is now in a position to raise this issue."

As justifying its doubt, the court cited United Fuel Gas Company v. Railroad Commission, 278 U. S. 300 (also cited to us by the appellees); and Wall v. Parrott Silver and Copper Company, 244 U. S. 407. In our view neither decision furnishes a basis for the doubt which the Circuit Court of Appeals expressed. In the Railroad Commission case, the Supreme Court's holding on the point we now discuss was that those "who have procured action by a state commission under a state statute may not assail that action in a federal court of equity on the ground that that statute, or the one creating the commission, is void under the state constitution." In the Parrott case the Supreme Court said that "The appellants by their action in instituting a proceeding for the valuation of their stock, pursuant to those statutes, which is still pending, waived their right to assail the validity of them."

Obviously the principle announced in these two cases, which is the same rule found in the other Supreme Court decisions cited by the appellees, does not apply where the litigant charges that the administrative body has exceeded the authority conferred upon it by a statute, but does not attack the validity of the statute.

Whether estoppel has arisen, whether waiver has occurred, depends entirely upon whether Condition No. 4 is valid or invalid. No administrative body has authority to contract with a regulated corporation in a manner contrary to the statute which is being administered, nor in a way which does not give effect to the intent of Congress. The regulated corporation, by accepting such an invalid condition imposed by a regulatory authority, does not thereby waive the right to rely on the statute, and the right later to denounce the provision which contravenes it.

The remaining question is whether a justiciable controversy was shown. The appellees maintain that there was none, saying that an indispensable element of justiciability is a showing of either positive action or a threat to take such action by the responsible officials involved. We need not elaborate upon the opinion of the learned justice of the District Court [11] which rejected that contention in denying the appellees' motion to dismiss the complaint.

[11] Justice Alexander Holtzoff in Peoples Bank v. Eccles, 64 F. Supp. 811.

The resolution of January 28, 1946, disclaiming an immediate purpose to enforce Condition No. 4, protected the bank from literal enforcement of the condition only on that day; for the appellees argue in this court that enforcement is "now justified by the facts," although the resolution has not been rescinded, and a different one has not been adopted.

To those acquainted with the realities of banking, it is plain that public knowledge in the bank's service area of the existence of Condition No. 4 does incalculable harm to the bank. It is generally realized that nothing could more quickly cause depositors to lose confidence in a banking institution than withdrawal of federal deposit insurance. It is equally true that the confidence of depositors is undermined and weakened when they know that their insurance may be withdrawn on short notice, without a hearing, and for a cause having no relation whatever to the safety of their deposits. In such circumstances a positive threat by the Board to enforce the condition is not necessary to do the harm. The threat is implicit in the condition itself, and the harm is present and continuing, due to the mere existence of the condition.

But with the amelioration of the ill-chosen language of Condition No. 4, which the appellees now concede to be proper and which they claim is expressive of their original intention in adopting it, the mere presence of the condition will not continue to be harmful to the bank. With the provision construed to have the meaning which we have said is the only significance properly attributable to it, the bank's public will know that it is subject to expulsion from the System only for reasons which would justify expulsion of any member bank.

We hold, therefore, that a justiciable controversy was shown by the pleadings; that the District Court erred in reaching the conclusion that the bank "cannot now attack the validity of the condition to which it voluntarily agreed." As the District Court should have proceeded to interpret Condition No. 4, its decree will be set aside and the cause remanded for the entry of a judgment construing that proviso in a manner consistent with its true meaning as conceded by the appellees and as stated in this opinion. When that is done, there will be no ground for restraining the appellees from enforcing the condition, nor will the bank have any need for such injunctive relief.

Reversed and remanded.

Dissenting opinion

EDGERTON, J., dissenting: I think the Board had authority to impose the condition of which appellant now complains. However that may be, I think it clear that since the Board has not taken

or threatened any action to enforce this condition there is no controversy over which the courts have jurisdiction. I do not reach the question of estoppel.

In United States Court of Appeals for the District of Columbia

No. 9338—April Term, 1947

PEOPLES BANK, APPELLANT

vs.

MARRINER S. ECCLES ET AL., APPELLEES

Appeal from the District Court of the United States for the District of Columbia

Before EDGERTON, CLARK, and WILBUR K. MILLER, JJ.

Judgment

Filed April 14, 1947

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court for further proceedings in conformity with the opinion of this Court.

Per Mr. Justice WILBUR K. MILLER.

Dated April 14, 1947.

In the United States Court of Appeals for the District of Columbia

[Title omitted.]
[File endorsement omitted.]

Designation of record

Filed May 14, 1947

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for

writ of certiorari in the above-entitled cause and include therein the following:

1. Joint appendix.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

George M. Fay,
GEORGE M. FAY,
United States Attorney for the District of Columbia,
Court House, Washington, D. C.
George B. Vest,
GEORGE B. VEST,
J. Leonard Townsend,
J. LEONARD TOWNSEND,
Board of Governors of the Federal Reserve System,
Washington, D. C.,
Counsel for Appellees.

Personal service of the within designation acknowledged this 13 day of May 1947.

Marshall Hornblower,
MARSHALL HORNBLOWER,
FULTON, WALTER & HALLEY,
1411 Pennsylvania Avenue N.W., Washington, D. C.,
Counsel for Appellant.

[Clerk's certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

Order allowing certiorari

(Filed October 13, 1947)

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE 1947